1	STEPHEN R. MICK (SBN 131569)					
2	smick@btlaw.com					
3	lheath(a)btlaw.com					
_	sjohnston@btlaw.com					
4	ROYA RAHMANPOUR (SBN 285076) rrahmanpour@btlaw.com					
5	BARNES & THORNBURG LLP 2029 Century Park East, Suite 300					
6	Los Angeles, California 90067 Telephone: (310) 284-3880					
7	Facsimile: (310) 284-3894					
8	Attorneys for Plaintiff/Counterdefendant JOHN FOGERTY					
9	MICHAEL D. ROUNDS (SBN 133972)					
10	mrounds@bhfs.com MITCHELL J. LANGBERG (SBN 17191	2)				
11	mlangberg(a)bhfs.com	.2)				
12	LAURA BIÉLÍNSKI (SBN 264115) lbielinksi@bhfs.com					
13	BROWNSTEIN HYATT FARBER SC 2049 Century Park East, Suite 3550	HRECK, LLP				
14	Los Angeles, CA 90067-3007 Telephone: (310) 500-4600					
	Facsimile: (310) 500-4602					
15	Attorneys for Plaintiffs/Defendants/Count	erclaimants				
16	POOR BOY PRODUCTIONS, INC., CREEDENCE CLEARWATER REVIVA	ΛL,				
17	CREEDENCE CLEARWATER REVIVA STUART COOK, DOUGLAS CLIFFORD and PATRICIA FOGERTY	D,				
18		DISTRICT COURT				
19						
20	CENTRAL DISTRIC	CT OF CALIFORNIA				
21	JOHN FOGERTY, an individual;	Case No. 2:15-cv-06069-FMO-FFM				
22	Plaintiff,	[Consolidated with Case No. 2:15-cv-				
	V.	06501-FMO-FFM]				
23	STUART COOK, an individual;	STATEMENT OF UNCONTROVERTED FACTS				
24	DOUGLAS CLIFFORD, an individual; and POOR BOY PRODUCTIONS,					
25	INC., a corporation, Defendants.	Date: February 23, 2017 Time: 10:00 am Crtrm: 22 – 5 th Floor				
26		Judge: Hon. Fernando M. Olguin				
27		Judge: Hon. Fernando M. Olguin Pretrial Conference: March 3, 2017 Trial: March 21, 2017				
28	AND RELATED ACTIONS					

1

2

3

4

5

6

Pursuant to the Order re: Summary Judgment Motions (Dkt. #30) in this case, the parties provide the Court with the following joint appendix of undisputed and disputed facts. For purposes of this table, facts preceded by the letter "P" are presented by Plaintiff John Fogerty and facts preceded by the letter "D" are presented by Defendants Stuart Cook, Douglas Clifford, Patricia Fogerty, Poor Boy Productions, Inc., and Creedence Clearwater Revival.

JOHN FOGERTY'S UNDISPUTED FACTS

7 Fact Number	Fact	Citation Supporting Fact	Opposing Parties' Assertion	Citation Supporting Assertion
9 P1 0 1 2 3 4 5 6	In the late 1960's, John Fogerty, Tom Fogerty, Stuart Cook, and Douglas Clifford began performing as the band Creedence Clearwater Revival ("CCR")	Cook et al.'s Second Amended Complaint ("SAC") (Dkt. #34) at ¶ 11 [AE0004]; Deposition Transcript of Patricia Fogerty ("P. Fogerty Depo.") at pp. 23:23-24:7 [AE0466-67]	Undisputed.	ASSCICION
7 P2 8 9 0 1 2 3	In forming the CCR band, the four band members (John Fogerty, Tom Fogerty, Stuart Cook, and Douglas Clifford) also formed the CCR Partnership, a California general partnership.	SAC (Dkt. #34) at ¶ 6 (stating "CCR is a California partnership") [AE0003]	Disputed, ¶ 6 refers to the current CCR partnership and ¶ 11 refers to the original CCR partnership that included Tom Fogerty.	SAC (Dkt. 34) ¶ 11.
P3 P3 F3 F3 F8 F8	In or around 1971, Tom Fogerty left the CCR band.	Declaration of Douglas Clifford In Opposition To Motion To Dismiss, Member case, 2:15-cv- 6501-FMO-FFM, ECF No. 13-1 ("2015 Clifford	Undisputed.	

-1-

1			Decl."), ¶ 4 [AE0797].		
2					
3 4 5	P4	The remaining members of CCR disbanded in 1972.	2015 Clifford Decl."), ¶ 4 [AE0797].	Disputed only to the extent of the term "disbanded." The band broke up and stopped	S. Cook Depo Tr. 120:12-19 (AE0413).
6				playing together in 1972.	
7 8 9 10	P5	U.S. Service Mark Registration No. 1,222,931 for "Creedence Clearwater Revival" was registered on January 4, 1983.	SAC (Dkt. #34) at ¶ 12 and Ex. A [AE0004, 0020].	Undisputed.	
11	P6	The registered owner	SAC (Dkt. #34) at	Undisputed.	
12		of the service mark is "Creedence Clearwater Revival	¶ 12 and Ex. A [AE0004, 0020].		
13	D7	(Partnership)."	D C	TT 1' . 1	
14	P7	Tom Fogerty passed away on September 6, 1990.	Response of Douglas Clifford to Request for	Undisputed.	
1516			Admission No. 3 (Set one)[AE0225]		
17			Response of Stuart Cook to		
18			Request for		
19			Admission No. 3 (Set One)		
20			[AE0239]		
21			P. Fogerty Depo. Depo. at p. 43:11-		
22			13 [AE0468]		
23 24	P8	On September 6, 1990,	Declaration of	Undisputed.	
		no written partnership agreement governed	John Fogerty in Support of Motion		
25		the CCR Partnership.	for Summary Judgment		
26			("Fogerty Decl.")		
27			at ¶ 2 [AE1059]		
28	P9	To the extent any	Fogerty Decl. at ¶	Disputed. The	Trademark

-2-

1		document is asserted to be a written CCR	3 [AE1059]	1992 Trademark	Assignment
2		Partnership agreement,		Assignment explicitly states	(AE0556).
3		it does not contain explicit terms		that Patricia Fogerty replaced	
4		providing that the		Tom Fogerty in	
5		death of a CCR partner would not be cause for		said partnership for purposes of	
		dissolution.		ownership of the	
6				Creedence Clearwater	
7				Revival service	
8				mark and all goodwill related	
9	7.10			thereto.	
10	P10	Patricia Fogerty is the widow of Tom	P. Fogerty Depo. at 43:11-13	Disputed. Patricia Fogerty was only	P. Fogerty Depo at 43:11-13
11		Fogerty.	[AE0468].	a widow of Tom	(AE0468).
12				Fogerty on the date he died until	
13	D11	D. C. C. C.	D.E. (D	she remarried.	
	P11	Patricia Fogerty was never a member of the	P. Fogerty Depo. at p. 23:23-24:7	Undisputed.	
14		Creedence Clearwater	[AE0466-67].		
15	P12	Revival band. Patricia Fogerty	P. Fogerty Depo.	Undisputed.	
16		inherited Tom	at p. 45:4-10 [AE0469].	_	
17		Fogerty's estate pursuant to Tom	[AE0409].		
18	P13	Fogerty's will. Tom Fogerty's estate	P. Fogerty Depo.	Undisputed.	
19	113	included his financial	at p. 45:11-13	Ondisputed.	
20		interest in the band Creedence Clearwater	[AE0469].		
		Revival.			
21	P14	Patricia Fogerty inherited Tom	P. Fogerty Depo. at p. 45:14-21	Disputed. Patricia Fogerty received	P. Fogerty Depo. at 46:6-24, 71:3-9
22		Fogerty's financial	[AE0469].	all of Tom	(AE0469A, 0470)
23		interest in, including royalty payments from,		Fogerty's partnership	(assigned Tom Fogerty's interest
24		the service mark for		interest in the	in CCR Mark);
25		"Creedence Clearwater Revival"		CCR Mark, including its	Trademark Assignment
26				goodwill.	(AE0556)
27					(explicitly stating that Patricia
28					Fogerty replaced
40					Tom Fogerty in

-3-

1					said partnership for
2					purposes of ownership of the
					Creedence
3					Clearwater Revival
4					service mark and
5					all goodwill related thereto); July 12,
5					1996, Declaration
6					of John C. Fogerty
7					In Support of
0					Application for Preliminary
8					Injunction ("1996
9					J. Fogerty Decl.") ¶
10					21, Exhibit H
					(AE0528, AE0552- 553) (confirming
11					that Tom Fogerty's
12					rights in CCR
13					Mark were
					assigned to Patricia Fogerty).
14	P15	Patricia Fogerty	P. Fogerty Depo.	Disputed. All	P. Fogerty Depo. at
15		contends that she is a	at p. 71:14-20	partners except	70:23-71:13
16		partner in the CCR Partnership because	[AE0470].	John Fogerty in this litigation	(AE469B, 470) (confirming that
10		she believes John		contend that	she is a partner);
17		Fogerty has sued her in		Patricia Fogerty	D. Clifford Depo.
18		this consolidated		is a partner in the	at 60:23-
		lawsuit.		CCR partnership. Patricia Fogerty	61:12(AE0327-28) (Patricia Fogerty is
19				was mistaken that	a partner); S. Cook
20				Mr. Fogerty sued	Depo. at 23:10-18
21				her in the present lawsuit as	(AE0387) (same); P. Fogerty Decl. in
				opposed to the	Response to
22				1996 lawsuit.	Motion for Partial
23					Summary Judgment, ¶
24					2(AE1062)
					(explaining mistake
25					concerning belief
26	P16	Patricia Fogerty is not	See John Fogerty	Undisputed.	that she was sued).
27		a named defendant in	Complaint for	F	
		John Fogerty's lawsuit	Breach of Contract		
28		in this consolidated	(case number		
	1				

-4-

1		case.	BC587693)		
2			attached to Notice of Removal Case		
3			No. 2:15-cv- 06069 (Dkt. #1)		
4			[AE0086-95]		
5	P17	Patricia Fogerty contends that she is a	P. Fogerty Depo.	Disputed. All	P. Fogerty Depo. at 76:2-8 (AE0471)
6		partner in the CCR	at p. 76:11-20; Ex. 44 [AE0471,	partners except John Fogerty in	(signature as a
7		Partnership because she signed the 1995	0736-42].	this litigation contend that	partner evidences she is a partner); D.
8		license agreement licensing the CCR		Patricia Fogerty is a partner in the	Clifford Depo. at 60:23-61:12
9		service mark to Poor		CCR partnership. Ms. Fogerty	(AE0327-28)
10		Boy Productions, Inc.		testified that she	(Patricia Fogerty is a partner); S. Cook
11				licensed the CCR Mark to Poor Boy	Depo. at 23:10-18 (AE0387) (same).
12				Productions, Inc.	
13	P18	Regarding the 1995	P. Fogerty Depo.	as a partner. Undisputed.	
14		license agreement to Poor Boy Productions,	at p. 76:11-20 [AE0471].		
15		Inc., Patricia Fogerty was approached by	[2-2-0 17 2].		
16		Stuart Cook and			
17		Douglas Clifford to sign agreement.			
18	P19	In 1995 Cook and Clifford incorporated	2015 Clifford Decl., ¶ 9	Undisputed.	
19		Poor Boy Productions,	[AE0797-98];		
20		Inc. in Nevada for the purpose of performing	Clifford Depo. at		
21		live concerts as "Creedence Clearwater	p. 226:12-18 [AE0371].		
22	P20	Revisited."	-	II. diamata d	
23	P20	Douglas Clifford is the President and a	Clifford Depo. at p. 226:19-20	Undisputed.	
24		shareholder of Poor Boy Productions, Inc.	[AE0371];		
25			Cook Depo. at 200:21-22		
26			[AE0426].		
27	P21	Stuart Cook is the	Clifford Depo. at	Undisputed.	
28		Secretary, Treasurer, and a shareholder of	p. 226:21-24 [AE0371].;		

-5-

1 2 3		Poor Boy Productions, Inc.	Cook Depo. at p. 200:18-20 [AE0426].		
4	P22	The Cook parties did not speak to John	P. Fogerty Depo. at p. 123:24-124:1	Disputed. Although the	Declaration of John Mason, dated July
5		Fogerty about the 1995 license agreement prior	[AE0480-81];	Cook Parties did not speak	29, 1996 ("Mason Decl."), ¶¶ 9-13
6 7		to their execution of the agreement.	Clifford Depo p. 231:1-18	personally to Mr. Fogerty, their	Exhibits 27-28 (AE0925, 928-
8			[AE0372].	counsel did speak with Mr.	929,946-948).
9				Fogerty's counsel about it.	
10	P23	John Fogerty is not a signatory to the 1995	P. Fogerty Depo. at Ex. 44	Undisputed.	
11		license agreement.	[AE0736-42].		
12	P24	Patricia Fogerty contends that she is a	P. Fogerty Depo. at p. 76:21-25; Ex.	Disputed. All partners except	P. Fogerty Depo. at 76:2-25 (AE0471)
13		partner in the CCR	45 [AE0471,	John Fogerty in	(signature as a
14		Partnership because, in 2015, she signed an	0744-53]	this litigation contend that	partner evidences she is a partner); D.
15		extension of the 1995 license agreement		Patricia Fogerty is a partner in the	Clifford Depo. at 60:23-61:12
16		licensing the CCR service mark to Poor		CCR partnership. Ms. Fogerty	(AE0327-28) (Patricia Fogerty is
17		Boy Productions, Inc.		testified that she licensed the CCR	a partner); S. Cook Depo. at 23:10-18
18 19				Mark to Poor Boy Productions, Inc.	(AE0387) (same).
20	P25	The Cook parties did	Clifford Depo. at	as a partner. Disputed.	S. Cook Depo. at
21		not provide John Fogerty a copy of the	p. 238:16-18 [AE0377];	Incomplete. The reason that Mr.	214:21-215:20 (AE0428-429)
22		2015 extension	-	Fogerty was not	(stating that this
23		agreement.	Cook Depo. at p. 214:21-24	provided the extension	was reason); 2001 Settlement
24			[AE0428].	agreement is that he already has his	Agreement, ¶ 3 (AE0612)
25				agreement for royalties in the	(describing royalties to Mr.
26				2001 Settlement Agreement.	Fogerty for use of Creedence
27					Clearwater Revisited).
28	P26	The Cook parties did	Clifford Depo. at	Disputed.	S. Cook Depo. at

1 2 3 4 5		not discuss the 2015 extension agreement with John Fogerty.	p. 238:19-21 [AE0377].	Incomplete. The reason that the 2015 extension was not discussed with Mr. Fogerty is that he already has his agreement for royalties in the 2001	214:21-215:20 (AE0428-429) (stating that this was reason); 2001 Settlement Agreement, ¶ 3 (AE0612) (describing royalties to Mr.
6				Settlement	Fogerty for use of
7				Agreement.	Creedence Clearwater
8	P27	The Cook parties did	Clifford Depo. at	Disputed.	Revisited). S. Cook Depo. at
9	12/	not inform John	p. 238:22-239:1	Incomplete. The	214:21-215:20
10		Fogerty about the 2015 extension agreement.	[AE0377].	reason Mr. Fogerty was not	(AE0428-429) (stating that this
11				informed about that 2015	was reason); 2001 Settlement
12				extension is that he already has his	Agreement, ¶ 3 (AE0612)
13				agreement for royalties in the	(describing royalties to Mr.
14				2001 Settlement	Fogerty for use of
15				Agreement.	Creedence Clearwater
16	P28	The 2015 extension	P. Fogerty Depo.	Undisputed.	Revisited).
17		agreement does not contain a signature line	at Ex. 45 [AE0744-53].	_	
18		for John Fogerty nor did John Fogerty sign	[
19		the agreement.			
20	P29	Patricia Fogerty contends that she is a	P. Fogerty Depo. at p. 76:2-8; Ex.	Disputed. All partners except	D. Clifford Depo. at 60:23-61:12
21		partner in the CCR Partnership because	40 [AE0471, 0709-24]	John Fogerty in this litigation	(AE0327-28) (Patricia Fogerty is
22		she signed an agreement licensing to		contend that Patricia Fogerty	a partner); S. Cook Depo. at 23:10-18
23		Warner Home Video		is a partner in the	(AE0387) (same);
24		the right to use videotape footage of		CCR partnership. The license to	Ex. 40 (AE0710), ¶ 2(i) and (ii)
25		members of Creedence Clearwater Revival		Warner Home Video includes a	(describing CCR name license for
26		from their show at Woodstock.		license to use the CCR "name" for	box set)
2728		Woodstock.		advertisements	
40				and packaging of	

-7-

1 2				the licensed Woodstock box set.	
3	P30	Regarding her signature on the license	P. Fogerty Depo. p. 99:2-101:3; Ex.	Undisputed.	
4		to Warner Home Video, Patricia Fogerty	40 [AE0475-77, 0709-24]		
5 6		signed her name under a column titled "Estate of Tom Fogerty" and			
7		handwrote the word "executor" under her			
8		signature.			
9	P31	Patricia Fogerty has confirmed that she	P. Fogerty Depo. pp. 100:25-101:3	Disputed. Ms. Fogerty testified	P. Fogerty Depo. 77:18-78:13
10		signed the Warner	[AE0476-77]	that the	(AE0472-472A);
11		Home Video license in her capacity as the		agreement was signed in her	99:8-19 (AE0475).
12		executor of Tom Fogerty's estate.		capacity as a partner.	
13	P32	Patricia Fogerty	P. Fogerty Depo.	Disputed. All	D. Clifford Depo.
		contends that she is a partner in the CCR	at p. 77:5-9 [AE0472]	partners except John Fogerty in	at 60:23-61:12 (AE0327-28)
14		Partnership because	,	this litigation	(Patricia Fogerty is
15		she signed an assignment of		contend that Patricia Fogerty	a partner); S. Cook Depo. at 23:10-18
16		trademark for the CCR service mark.		is a partner in the CCR partnership.	(AE0387) (same).
17 18				The testimony does not support	
				the remaining portion of this	
19				assertion.	
20	P33	In support of her contention that she is a	P. Fogerty Depo. at p. at 109:18-	Disputed. All partners except	D. Clifford Depo. at 60:23-61:12
21		partner, Patricia	110:4 [AE0478-	John Fogerty in	(AE0327-28)
22		Fogerty refers to an assignment recorded in	79]	this litigation contend that	(Patricia Fogerty is a partner); S. Cook
23		the United States	Ex. 6 [AE0556-	Patricia Fogerty	Depo. at 23:10-18
24		Patent and Trademark Office ("USPTO") on	59]	is a partner in the CCR partnership.	(AE0387) (same).
25		April 3, 1992.	CCR0000828-832 [AE0843-47]		
26	P34	The 1992 assignment to Patricia Fogerty was	P. Fogerty Depo. at Ex. 43	Undisputed.	
27		not the first assignment filed with the USPTO	[AE0733-34]		
28		for the purpose of			
	1				

-8-

1		transferring Tom			
2		Fogerty's interest in			
		the CCR Service Mark			
3	P35	to Patricia Fogerty. On August 9, 1991,	P. Fogerty Depo.	Disputed.	
4		attorney Harris	at Ex. 41	Incomplete. Mr.	
		Zimmerman sent a	[AE0727-28]	Zimmerman also	
5		letter to John Fogerty,		stated, among	
6		Stuart Cook, and		other things, that	
0		Douglas Clifford,		the Creedence	
7		informing them that as a result of Tom		Clearwater Revival	
8		Fogerty's death and the		partnership	
8		fact that Patricia		owned the CCR	
9		Fogerty was Tom		Mark.	
10		Fogerty's sole heir, Mr.			
10		Zimmerman would			
11		arrange to transfer Tom Fogerty's interest in			
12		the CCR service mark			
		to Patricia Fogerty.			
13	P36	The August 9, 1991	P. Fogerty Depo.	Disputed. For	
14		letter does not state that	at Ex. 41	purposes of the	
		the transfer of Tom	[AE0727-28].	partnership's	
15		Fogerty's interest in the CCR service mark		ownership of the CCR Mark, that	
16		to Patricia Fogerty		is exactly what	
		would make her a		the letter states.	
17		partner in the CCR			
18		Partnership.		1	
	P37	In his August 9, 1991	P. Fogerty Depo.	Undisputed.	
19		letter, Mr. Zimmerman stated that he was	at Ex. 41 [AE0727-28].		
20		enclosing a proposed	[AL0727-20].		
		assignment of Tom			
21		Fogerty's interest to			
22	D 20	Patricia Fogerty.	D. F D.	T. 1 1	
	P38	On September 9, 1991,	P. Fogerty Depo. at Ex. 42	Undisputed.	
23		John Fogerty signed an "Assignment of	[AE0730-31]		
24		Trademark Interest" in			
		order to assign Tom			
25		Fogerty's interest in			
26		the CCR Service Mark			
	P39	to Patricia Fogerty.	D Fogarty Dana	Undignuted	
27	F 37	The 1991 Assignment of Trademark noted	P. Fogerty Depo. at Ex. 42	Undisputed.	
28		that Tom Fogerty died,	[AE0730-31]		

9

1		leaving a last will and testament, pursuant to			
2		which Patricia Fogerty was the sole heir.			
3	P40	The 1991 Assignment	P. Fogerty Depo.	Disputed. As Mr.	P. Fogerty Depo at
4		of Trademark does not state that the transfer of	at Ex. 42 [AE0730-31]	Zimmerman's August 9, 1991	Ex. 41 (AE0727).
5		Tom Fogerty's interest in the CCR service		letter indicates, the purpose of the	
6		mark to Patricia Fogerty would make		Assignment was to make Patricia	
7 8		her a partner in the CCR Partnership.		Fogerty a partner for purposes of	
9		Cert i wi wierening.		ownership of the CCR Mark. The	
10				term "stand in the	
11				same place and stead" means	
12				Patricia Fogerty replaced Tom	
13				Fogerty as a partner for	
14				purposes of ownership of the	
15	P41	In a letter dated	P. Fogerty Depo.	CCR Mark. Undisputed.	
16		January 28, 1992, attorney Harris	at Ex. 43 [AE0733-34].	1	
17		Zimmerman advised Stuart Cook, John	[
18		Fogerty, Douglas Clifford, and Patricia			
19		Fogerty that the			
2021		USPTO had refused to record the 1991			
22	P42	assignment submittal. In his January 28, 1992	P. Fogerty Depo.	Undisputed.	
23		letter, Mr. Zimmerman further stated that he	at Ex. 43 [AE0733-34].		
24		had revised the assignment papers for	· -		
25		Stuart Cook, John Fogerty, Douglas			
26		Clifford, and Patricia			
27	P43	Fogerty's signatures. The January 28, 1992	P. Fogerty Depo.	Disputed.	P. Fogerty Depo. at
28		letter from Mr. Zimmerman did not	at Ex. 43 [AE0733-34].	Incomplete. Mr. Zimerman had	41 (AE0727).

10

1		state that the revised		already stated that	
2		assignment papers would make Patricia		that was the	
		Fogerty a partner in the		purpose of the Assignment.	
3		CCR Partnership.			
4	P44	In a "Notice of Non- Recordation of	P. Fogerty Depo. at Ex. 43	Undisputed.	
5		Document" dated	[AE0733-34].		
6		November 15, 1991, the USPTO advised:			
7		"[p]roof of authority of legatee of the estate of			
8		said deceased should			
9		be submitted for recording as a separate			
10		document. Also, 'Creedence Clearwater			
11		Revival', with the inclusion of Tricia			
12		Fogerty, heir to the			
13		deceased, Tom Fogerty, should be so			
14		stated in the transfer			
15	P45	clause as the assignee." In response to the	P. Fogerty Depo.	Undisputed.	
		USPTO's November	at Ex. 6 [AE0556-	1	
16		15, 1991 notice, Mr. Zimmerman filed for	59]		
17		recordation of the 1992	CCR0000828-854		
18		assignment papers and a copy of Tom	[0843-69].		
19		Fogerty's last will and testament.			
20	P46	Douglas Clifford	Clifford Depo. at	Disputed.	S. Cook Depo. at
21		contends that Patricia Fogerty became a	pp. 126:19-127:8 [AE0338-39].	Incomplete. All partners except	23:10-18 (AE0387) (Patricia Fogerty is
22		partner in the CCR		John Fogerty in	a partner); Clifford
23		Partnership because she was Tom Fogerty's		this litigation contend that	Depo. at 127:9-17 (AE0339).
24		heir under Tom Fogety's will.		Patricia Fogerty is a partner in the	
25		1 - 3644) 2 11		CCR partnership. Mr. Clifford also	
26				testified that the	
27				Trademark Assignment made	
				Patricia Fogerty a	
28				partner in place	

11

				T	
1		- 1 GH22 1	G11.00 1.7	of Tom Fogerty.	
2	P47	Douglas Clifford never	Clifford Depo. at	Disputed.	Cook Depo. at 39:24-42:8
		discussed with John Fogerty about whether	p. 173:18-21 [AE0364].	Incomplete. Mr. Clifford and Mr.	(AE0391-394);
3		or not Patricia Fogerty	[1120301].	Cook have not	Declaration of
4		would become a		spoken with John	Douglas Clifford In
		partner in the CCR		Fogerty since the	Response To John
5		Partnership.		1980s as a result of the	Fogerty's Motion for Summary
6				acrimonious band	Judgment ("2017
7				breakup.	Clifford Response
					Decl."), ¶ 2
8	P48	The CCR Partnership	Response of	Undisputed.	AE1069).
9	1 40	has not filed any	Douglas Clifford	Ondisputed.	
10		Federal tax returns	to Request for		
		since 1990.	Production ("Clifford RFP		
11			Response") No. 1		
12			[AE0129-30];		
13			D CC.		
13			Response of Stuart Cook to Request		
14			for Production		
15			("Cook RFP		
			Response") No. 1		
16			[AE0168-69];		
17			Response of		
18			Patricia Fogerty to		
			Request for Production ("P.		
19			Fogerty RFP		
20			Response") No. 1		
21			[AE0203-04];		
			Response of		
22			Creedence		
23			Clearwater		
24			Revival to Request for Production		
			("CCR RFP		
25			Response") No. 1		
26			[AE0103-104];		
27					
			P. Fogerty Depo.		
28			at p. 89:16-20		

1			[AE0473];		
2 3			Cook Depo. at p. 155:4-7 [AE0422].		
	P49	The CCR Partnership has not filed any	Clifford RFP Response No. 2	Undisputed.	
4 5		California tax returns since 1990	[AE0130-31];		
6			Cook RFP Response No. 2		
7			[AE0169];		
8			P. Fogerty RFP Response No. 2		
9			[AE0204-05];		
10			CCR RFP		
11			Response No. 2 [AE0104];		
12			P. Fogerty Depo.		
13			at p. 89:21-22 [AE0473];		
14			Cook Depo. at p.		
15			155:8-9 [AE0422].		
16 17	P50	The CCR Partnership	Clifford RFP	Undisputed.	
18		has not filed any IRS Form 1065s or Schedule K-1s since	Response No. 3 [AE0131-32];		
19		1990	Cook RFP		
20			Response No. 3 [AE0170];		
21			P. Fogerty RFP		
22			Response No. 3 [AE0205];		
23			CCR RFP		
24			Response No. 3 [AE0104-05];		
25					
26			P. Fogerty Depo. at p. 89:23-90:1		
27			[AE0473].		
28	P51	The CCR Partnership	Clifford RFP	Undisputed.	

13

1		has not filed any documents with the	Response No. 8 [AE0136];		
2		California Secretary of			
3		State since 1990	Cook RFP Response No. 8		
4			[AE0173-74];		
5			P. Fogerty RFP		
6			Response No. 7 [AE0208-09];		
7			CCR RFP		
8			Response No. 11 [AE0111];		
9					
10			P. Fogerty Depo. at p. 90:2-4		
11			[AE0208-09];		
12			Cook Depo. at p. 155:12-14		
13			[AE0422].		
14	P52	The CCR Partnership	Clifford RFP	Undisputed.	
15		has not issued any notices of meetings of	Response No. 11 [AE0138-39];		
16		the CCR Partnership since 1990	Cook RFP		
17			Response No. 11 [AE0176-77];		
18			[,,,,,,,,,,,,,,,,,,,,,,,,,,		
101			D. Fogorty DED		
19			P. Fogerty RFP Response No. 10		
20			Response No. 10 [AE0211];		
20 21			Response No. 10 [AE0211]; CCR RFP		
20 21 22			Response No. 10 [AE0211];		
20212223			Response No. 10 [AE0211]; CCR RFP Response No. 14 [AE0113]; P. Fogerty Depo.		
2021222324			Response No. 10 [AE0211]; CCR RFP Response No. 14 [AE0113];		
202122232425			Response No. 10 [AE0211]; CCR RFP Response No. 14 [AE0113]; P. Fogerty Depo. at p. 90:7-9		
20212223242526			Response No. 10 [AE0211]; CCR RFP Response No. 14 [AE0113]; P. Fogerty Depo. at p. 90:7-9 [AE0474]; Clifford Depo. at p. 130:3-7		
202122232425	P53	The CCR Partnership	Response No. 10 [AE0211]; CCR RFP Response No. 14 [AE0113]; P. Fogerty Depo. at p. 90:7-9 [AE0474]; Clifford Depo. at	Undisputed.	

14

1		has not generated any	Response No. 12		
2		meeting minutes or meeting notes for any	[AE0139-40];		
3		meeting of the CCR Partnership since 1990	Cook RFP Response No. 12		
4		r	[AE0177];		
5			P. Fogerty RFP		
6			Response No. 11 [AE0211-12];		
7			CCR RFP		
8			Response No. 15 [AE0113-14];		
9			Cook Depo. at p.		
10			155:24-156:5		
11			[AE0422].		
12	P54	From the time of Tom Fogerty's death until	Cook Depo. at p. 155:20-23	Undisputed.	
13		present, there has not been a meeting of the	[AE0422].		
14		alleged partners (John			
15		Fogerty, Stuart Cook, Douglas Clifford, and			
16		Patricia Fogerty) where all four were present.			
17	P55	The CCR Partnership has not had an	Clifford Depo. at p. 129:21-25	Undisputed.	
18		accountant since	[AE0341]		
19	P56	September 6, 1990. The CCR Partnership	Cook Depo. at p.	Disputed.	Cook Depo. at
20		does not have a business address.	129:12-14 [AE0416].	Incomplete. The partnership has a	129:15-22 (AE0416).
21	P57		-	mailing address.	,
22	Γ 3 /	The CCR Partnership does not own any property	Clifford Depo. at p. 130:19-20 [AE0342].	Disputed. The partnership owns the CCR Mark. It	Clifford Depo. at 130:8-17 (AE0342) (ownership of CCR
23		property	[/110342].	does not own any	Mark); Cook
24				real property.	Depo. at 129:15-22 (AE0416) (same).
25	P58	John Fogerty is a former member of the	Clifford Depo. at pp. 67:23-68:3	Undisputed.	
26		band Creedence Clearwater Revival.	[AE0330-31].		
27	7.5				
28	P59	John Fogerty was the	Clifford Depo. at	Undisputed.	

1		lead singer, guitarist, and primary song	pp. 82:23-84:7, 15-21 [AE0334-		
2		writer for Creedence Clearwater Revival.	36];		
4			Cook Depo. at p. 55:8-10, 19-21, p.		
5			106:22-25, and p. 107:1-24		
6			[AE0402, 0411- 12];		
7			CCR0000578		
8			[AE0839].		
9					
10	P60	John Fogerty has a longstanding and	Clifford Depo. at pp. 82:1-85:12	Disputed. Mischaracterizes	
11		intimate association with the Creedence	[AE0334-37].	Clifford's cited testimony, which	
12		Clearwater Revival band that includes		merely discusses CCR's albums	
13		releasing seven studio		and who was	
14		albums between 1968 and 1972.		credited with writing them and	
15				playing particular instruments.	
16	P61	At his concerts, John Fogerty plays songs	Deposition Transcript of	Disputed. Incomplete.	Clifford Depo. at 176:1-177:18
17		originally performed by the band Creedence	John Fogerty ("J. Fogerty Depo.") at	Except for three or so instances,	(AE0365-366).
18		Clearwater Revival.	Ex. 1 [AE0494- 96].	Fogerty did not publicly perform	
19			70].	CCR songs at his	
20				concerts for many years after the	
2122				band broke up in 1972, until	
23				approximately 1997 when the	
24				Revisited band began publicly	
25				performing CCR music.	
26	P62	John Fogerty does not	Clifford Depo. at	Undisputed.	
27		need permission from the Cook parties to sing	p. 36:10-22 [AE0321];		
28		the songs that he wrote and he performed when	Cook Depo at pp.		
		_			

-16-

1		he was a member of the	44:19-45:2		
2		band Creedence Clearwater Revival.	[AE0395-96].		
3	P63	John Fogerty playing CCR music live does not hurt the brand of	Clifford Depo. at pp. 66:25-67:12 [AE0329-30].	Undisputed.	
5		Creedence Clearwater Revival.	[AL0329-30].		
6	P64	Stuart Cook, Douglas Clifford, Patricia	Clifford Depo. at p. 29:12-16	Undisputed.	
7		Fogerty, the CCR Partnership, and Poor	[AE0317].		
8		Boy Productions, Inc. have not conducted any			
9		surveys regarding whether John Fogerty's			
10		actions are likely to confuse consumers.			
12	P65	The Cook parties have not presented expert	N/A	Undisputed.	
13		witness evidence regarding likelihood of			
14	P66	confusion. The Cook parties have	N/A	Disputed.	Clifford Depo. at
15		not produced any admissible evidence of		1	31:13-32:16 (AE0319-320).
16		actual consumer confusion.			
17 18	P67	The Cook parties do not think that it	P. Fogerty Depo. at p. 152:1-3	Disputed. Mischaracterizes	P. Fogerty Depo. at 153:18-154:17
19		confuses or misleads fans for John Fogerty	[AE0482];	the cited testimony.	(AE0482A-482B, Depo. Ex.'s 8
20		to bill himself as being formerly of Creedence	Clifford Depo. at p. 36:15-22	Patricia Fogerty and Douglas	(AE0561) and 26 (AE639)
21		Clearwater Revival.	[AE0321].	Clifford testified only as to	(confusing and misleading); D.
22				Fogerty's use of the words	Clifford at 27:15- 23, 29:17-23,
23				"formerly of" generally and	30:15-21 (AE0316-318) (same).
24				descriptively and not to Fogerty's	
25				use of that phrase in any particular	
2627				advertisement. Both witnesses	
28				testified that John Fogerty's	
				1 ugury s	

17

1 2				promotional advertising for concerts at issue	
3				is infringing.	
4	D(0	The Cook namics do	Clifford Dana at	Diametral	D. Forgarty Dans of
5	P68	The Cook parties do not think that it	Clifford Depo. at p. 41:16-22	Disputed.	P. Fogerty Depo. at 153:18-154:17
6		confuses or misleads fans for John Fogerty	[AE0322];	The question Douglas Clifford	(AE0482A-482B, Depo. Ex.'s 8
7		to state that he wrote the songs or performs	P. Fogerty Depo. at p. 152:5-12	responded to is whether it would	(AE0561) and 26 (AE639)
8		the song of Creedence Clearwater Revival.	[AE0482];	confuse or mislead the fans	(confusing and misleading); D.
9		Cical water revival.	Cook Depo p. 60:15-19	for Fogerty to simply "tell[] his	Clifford at 27:15- 23, 29:17-23,
10			[AE0407].	fans that he wrote	30:15-21(AE0316-
11				the songs or performed the	318) (same); Cook Depo. at 45:14-
12				songs." (emphasis	47:17 (AE0396- 398) (same).
13				added.)	
14				Patricia Fogerty testified that she	
15				has never seen Mr. Fogerty	
16 17				advertised as	
18				"songwriter for Creedence	
19				Clearwater Revival" but that	
20				as a general and descriptive	
21				reference it is "not that	
22				confusing."	
23				Stuart Cook was	
24				asked whether he believes the	
25				general and descriptive	
26				"statement" that Fogerty performs	
27				the songs is false or misleading.	
28				or misicuanig.	

1 2 3 4 5 6				All three witnesses testified that John Fogerty's promotional advertising for the concerts at issue is infringing.	
7	P69	The Cook parties do	Clifford Depo. at	Disputed.	P. Fogerty Depo. at
8	10)	not believe that John Fogerty needs the CCR	p. 46:14-19; Ex. 8 [AE0323]	Incomplete and mischaracterizes	153:18-154:17 (AE0482A-482B),
9		Partnership's permission to state "Performs Live the		the cited testimony, which instead	Depo. Ex.'s 8 (AE0561) and 26
11		Albums of Creedence		demonstrates	(AE639) (confusing and
12		Clearwater Revival"		Clifford's belief that Fogerty	misleading); D. Clifford at 27:15-
13				needs permission to use such	23, 29:17-23, 30:15-21 (AE0316-
14				language when it is used in an	318) (same); Cook Depo. at 45:14-
15				infringing manner.	47:17 (AE0396- 398) (same); Cook
16					Depo. at 53:3-
17				All three witnesses	61:25 (AE0400- 408); (additional
18				testified that John Fogerty's	infringing use by Mr. Fogerty);
19				promotional advertising for	See Depo. Exhibits
20				the concerts at	2, 8, 22-34
21				issue is infringing.	(AE505-517, 561, 624-655)
22				Mr. Cook	(infringing use at issue).
23				testified in detail about the	
24				additional	
25				infringing conduct for	
26				merchandise and otherwise that	
27				Mr. Fogerty has engaged in.	
28					

P70	The Cook parties	Clifford Depo. at	Disputed.	Clifford Dep. 56:4-
	believe that the	p. 56:4-12; 57:7-	Incomplete and	57:20 (AE0325-
	statement "John Fogerty, The	14 [AE0325-26];	mischaracterizes the cited	326) (Testifying to infringing use);
	Creedence Legend" is a	Cook Depo p.	testimony.	Cook Dep. 59:20-
	truthful statement and not false or misleading.	60:11-14 [AE0407].	The cited	60:10 (AE0406- 407) (same); Ex. 30
	not faise of finisicading.	[AL0407].	testimony of	(AE0647)
			Douglas Clifford	(infringing use at
			reflects only that Mr. Clifford	issue).
			agrees that	
			Fogerty "is a	
			legend associated with the band."	
			Mr. Clifford did	
			not testify that such a statement	
			when used in	
			particular	
			merchandise is not false and	
			misleading; to the	
			contrary, Mr. Clifford testifies	
			that he believes	
			Fogerty needed	
			permission for a T-shirt bearing	
			this phrase—	
			"that's a true	
			statement, but it's not within the	
			framework of the	
			settlement."	
			Likewise, Stuart	
			Cook testified	
			that he did not "have a problem	
			with the text" but	
			that Fogerty	
			needs permission for use of the	
			phrase on	
			merchandise	

1 2				where such use is not	
3				informational— i.e., where is used in a trademark	
4				sense.	
5					
6	P71	John Fogerty's ninth solo studio album,	Fogerty Decl. at ¶ 4 [AE1059]	Undisputed.	
7		released in 2013, was entitled "Wrote a Song			
8		for Everyone."			
9	P72	In 1996, John Fogerty filed a lawsuit against	SAC (Dkt. #34) at ¶¶ 16-17	Undisputed.	
10		Cook, Clifford, and	[AE0005].		
11		Poor Boy Productions, seeking an injunction			
12		to prevent them from performing under the			
13		name "Creedence Clearwater Revisited,"			
14		or any other name that			
15		was confusingly similar to CCR.			
16	P73	The 1996 lawsuit was eventually settled on	SAC (Dkt. #34) at ¶ 18 [AE0005-6]	Undisputed.	
17		January 9, 2001, on the basis of a letter	Deposition Exhibit		
18		agreement ("2001 Settlement	13 [AE0612-14].		
19		Agreement")			
20	P74	The 2001 Settlement Agreement is a valid	Response of Douglas Clifford	Undisputed.	
21		and enforceable contract.	to Request for Admission No. 10		
22		Contract.	(Set one)		
23			[AE0228]		
24			Response of Stuart Cook to Request		
25			for Admission No. 10 (Set One)		
26	255	TI 2001 G 1	[AE0242].	D: 1 5	G 4 G (D1 : " 2 D
27	P75	The 2001 Settlement Agreement required	Deposition Exhibit 13 [AE0612-14]	Disputed. The 25% payment for	SAC (Dkt. # 34) at C, ¶ 3(c) (AE0028)
28		Cook, Clifford, and		"Revisited"	(terms of 25%

-21-

1		Poor Boy to make		merchandise	royalty payment);
2		quarterly payments to John Fogerty equaling		occurred only if the merchandise	Cook Depo. at 229:19-230:16
3		5.5% of "gross annual		did not include a	(AE0434-435).
		income from performances in any		picture of one or members of the	
4		medium under the		Revisited group	
5		'Revisted' name" and		or other tour specific or	
6		25% of gross income on merchandising		commemorative	
7		income from licensees.		reference. Poor	
8				Boy never had reason to make a	
				25% royalty	
9	P76	Clifford, Cook, and	SAC (Dkt. #34) at	payment. Disputed. The	
10		Poor Boy made	¶¶ 24-25	citation does not	
11		payments to John Fogerty pursuant to	[AE0007].	support the assertion and	
12		this agreement for		only Poor Boy	
13		approximately 10 years.		made payments.	
14	P77	Clifford, Cook, and	Response of	Undisputed.	
		Poor Boy have not made any payments to	Douglas Clifford to Request for		
15		John Fogerty under the	Admission No. 9		
16		2001 Settlement	(Set one)		
17		Agreement related to income earned from the	[AE0228];		
18		use of the name	Response of		
19		"Creedence Clearwater Revisited" since at	Stuart Cook to Request for		
		least January 1, 2012.	Admission No. 9		
20			(Set One) [AE0241-42];		
21			Clifford Dans at		
22			Clifford Depo. at p. 253:5-9		
23			[AE0379];		
24			Cook Depo pp.		
25			228:21-229:7 [AE0434].		
26	P78	The 2001 Settlement	Deposition Exhibit	Disputed.	SAC (Dkt. #34) at
		Agreement also has a	13 [AE0612-14].	Paragraph 2(c)	Ex. C, ¶ 2(c)
27		provision whereby the name "Creedence		prohibits the Cook parties	(AE0027) (stating same); Cook Depo.
28		Clearwater Revisited"		from authorizing	at 226:10-227:24
	1				

-22-

1		could be used only by "a performing group		or licensing the CCR Mark to	(AE0431-432).
2		consisting of at least		third parties other	
3		Messrs. Clifford and Cook."		than a performing group consisting	
4		COOK.		of at least Messrs.	
				Clifford and	
5				Cook. Paragraph 2(c) does not	
6				state or mean that	
7				Messrs. Clifford and Cook have to	
8				perform every	
				show together,	
9				including when Mr. Clifford is	
10				being treated for	
11	P79	Cook has performed	Cook RFA	cancer. Undisputed.	
12		under the name	Response No. 14	Ondisputed.	
13		"Creedence Clearwater	[AE0243-44];		
		Revisited" without Clifford.	CCR0000463-64		
14			[AE0829-30]		
15					
16	P80	Cook, Clifford, and	CCR0000745	Disputed. The	
17		Poor Boy stated that their reason for	[AE0841]	document does not state that the	
18		stopping to pay John		quoted statements	
19		Fogerty under the 2011 Settlement Agreement		in the Ultimate Classic Rock	
		was due to (1) their		article were	
20		belief that Fogerty was infringing the CCR		attributed to John Fogerty.	
21		trademark and (2)			
22		statements attributed to John Fogerty in an			
23		article published by			
24		Ultimate Classic Rock article.			
25	P81	The Ultimate Classic	SAC (Dkt. #34) at	Disputed. Mr.	SAC (Dkt. #34) at
		Rock article is a single article by the Canadian	Ex. D [AE0031].	Fogerty quote in the article speaks	Ex. D (AE031) (full quote);
26		Press in which John		for itself:" "We	Fogerty Depo. at
27		Fogerty allegedly		had an agreement	120:15-24 (AE0300)
28		expressed his preference that Cook		among ourselves way back in the	(confirming quote);
Ī					

-23-

1 2 3		and Clifford not use the "Revisited" name.		day that we would never do such a thingIt really confuses the fans."	SAC, ¶ 25 (AE0007) (active link for article).
4				Mr. Fogerty has	
5				no reason to believe that he	
6				did not make the statements and	
7				agrees with them. The article is still	
8				available on the internet.	
9	P82	Clifford and Cook do not know if the	Clifford Depo p. 21:11-15	Disputed. Mr. Clifford's cited	Cook Depo. at 37:9-24 (AE0390);
10		statements attributed to	[AE0312];	testimony does	35:17-36:13
11		John Fogerty in the Ultimate Classic Rock	Cook Depo p.	not support the assertion. Mr.	(AE0388-89) (stating same);
12		article were in fact made by John Fogerty.	36:14-25 [AE0389].	Cook testified that there was no	Cook Decl. in Opposition to John
13				need to determine whether the	Fogerty's Motion for Partial
14				statements were made because	Summary Judgment ("Cook
15				they were quotes	Response Decl."), ¶
16				and there was no retraction. Mr.	2, Exhibits 1 and 2 (AE0841, 1078,
17				Cook also testifies that,	1083).
18				despite several opportunities	
19				provided by Revisited's	
20 21				counsel, Mr.	
22				Fogerty never denied that he	
23				made the statements.	
24	P83	Prior to filing their lawsuit against John	Clifford Depo p. 22:7-10 [AE0313];	Disputed. Mr. Clifford testified	Clifford Depo. at 21:11-15
25		Fogerty, Clifford and Cook did not verify or	Cook Depo p.	that he believed that Mr.	(AE0312), 23:18- 24:1 (AE0313-
26		confirm that the	37:9-13 [AE0390].	Fogerty's quotes	314); Cook Depo.
27		statements attributed to John Fogerty in the		were accurate because they	at 37:9-24 (AE0390); 35:17-
28		Ultimate Classic Rock article were in fact		were quotes, "things were	36:13 (AE0388-89) (stating same);
				-	

1		made by John Fogerty.		brewing" and "it	Cook Response
2				sounded just like something he	Decl. ¶ 2, Exhibits 1 and 2 (AE01078,
				would say." Mr.	1081, 1083).
3				Cook testified	
4				that there was no need to determine	
5				whether the	
				statements were	
6				made because they were quotes	
7				and there was no	
8				retraction. Mr.	
9				Cook also testifies that,	
				despite several	
10				opportunities	
11				provided by Revisited's	
12				counsel, Mr.	
				Fogerty never	
13				denied that he made the	
14				statements.	
15	P84	In settlement	Clifford Depo at	Undisputed.	
16		negotiations for the 1996 lawsuit, John	Ex. 87 [AE0824- 27].		
		Fogerty's counsel	,		
17		informed Cook, Clifford, and Poor Boy			
18		of John Fogerty's			
19		position that a "no			
20		disparagement" clause is not "advisable or			
		even enforceable based			
21		on its subjective nature.			
22		Obviously, the extent that one party has			
23		defamed the other there			
		are defamation laws			
24	P85	that provide a remedy." The 2001 Settlement	Deposition Exhibit	Undisputed.	
25		Agreement provided	13 [AE0612-14]		
26		"John will withdraw			
27		his objection to Messrs. Clifford's and Cook'			
		performing under the			
28		name 'Creedence			

-25-

	Clearwater Revisited."			
P86	Following the 2001 Settlement Agreement, John Fogerty dismissed the 1996 lawsuit.	SAC (Dkt. #34) at ¶ 18 [AE0005-06].	Disputed. Incomplete. The citation does not support the assertion and the 1996 lawsuit was dismissed with prejudice.	1996 Stip and Order to Dismiss (AE0992-93).
P87	The Cook Parties contend that, as the majority partners of the CCR Partnership they can make partnership decisions regardless of	Clifford Depo. at pp. 73:20-74:2; 161:22-162:1 [AE0332-33, 0358-59];	Disputed. The Cook Parties are prohibited from licensing the CCR Mark to third parties	Settlement Agreement, ¶¶ 2(a) and 2(c) (AE0612): Fogerty Depo. at 109:10-18 (AE0298A) (third
	John Fogerty's	Cook Depo. at p.	without John	party licensing
	position.	23:10-18 [AE0387].	Fogerty's consent.	prohibited); Cook Support Decl., ¶¶
		[3-6 (AE1072-74) (prohibition on
				third party licensing); Clifford
				Support Decl., ¶ 3 (AE01065) (if
				merchandise
				licensing not prohibited, Fogerty's conduct
P88	On or about March 1,	SAC (Dkt. #34) at	Disputed. The	prohibited). Ex. 44, ¶ 1(a)
	1995, Stuart Cook and Douglas Clifford	¶ 14 [AE0005];	License is made under any and all	(AE0736).
	(along with Patricia	P. Fogerty Depo. at Ex. 44	rights to the CCR	
	Fogerty) executed a "license" of the CCR	[AE0735-42].	Mark, including common law	
	service mark registration on behalf		rights and the federal	
	of the CCR Partnership to Poor Boy		registration.	
	Productions, Inc.			
P89	The 1995 license agreement did not include a provision for royalties to the CCR	Clifford Depo. at pp. 234:16- 235:21 [AE0373-74];	Undisputed.	
	partnership for Creedence Clearwater Revisited's	Ex. 44 [AE0735- 42];		

-26-

1 2		merchandise sales.	Cook Depo. at p. 211:6-11 [AE0427].		
3	P90	On or about February 28, 2015, Stuart Cook,	P. Fogerty Depo. at Ex. 45	Disputed. The word	
4 5		Douglas Clifford, and Patricia Fogerty, purportedly on behalf	[AE0744-53]	"purportedly" appears nowhere in Ex. 45.	
6		of the CCR partnership,		III EX. 43.	
7		entered into an extension of the 1995			
8		license agreement with Poor Boy Productions,			
10	P91	John Fogerty is not a signatory to the 2015	P. Fogerty Depo. at Ex. 45	Disputed. Incomplete.	S. Cook Depo. at 214:21-215:20
11		extension agreement nor is there a line for	[AE0744-53]	Fogerty had an independent deal	(AE0428-29) (stating that this
12 13		his signature.		for merchandise royalties under the 2001	was reason); 2001 Settlement Agreement, ¶ 3
14				Settlement Agreement that	(AE0613) (describing
15				he has been paid under since 2001.	royalties to Mr. Fogerty for use of
1617				There is no need to pay him under the 2015	Creedence Clearwater Revisited).
18	P92	Under the 2015	Clifford Depo. at	agreement. Disputed.	S. Cook Depo. at
19	1,72	extension agreement, Poor Boy Productions,	pp. 236:4-239:3 [AE0375-78];	Incomplete. Fogerty had an	214:21-215:20 (AE0428-29)
20		Inc. was to pay the CCR Partnership 6% of	Cook Depo. at pp.	independent deal for merchandise	(stating that this was reason); 2001
21		gross performance	214:6-216:16	royalties under	Settlement
22		revenues from Creedence Clearwater	[AE0428-30];	the 2001 Settlement	Agreement, ¶ 3 (AE0613)
23		Revisited performances and 6% of net sales of	Ex. 45 [AE0744-53].	Agreement that he has been paid	(describing royalties to Mr.
24		Creedence Clearwater	1.	under since 2001	Fogerty for use of
25		Revisited's merchandise		Settlement Agreement.	Creedence Clearwater
26				There is no need to pay him under	Revisited).
27				the 2015 agreement.	
28	P93	From approximately	Clifford Depo. at	Disputed. The	

27

1 2 3		1995 to 2015, Creedence Clearwater Revisited sold merchandise.	pp. 183:17-24, 235:12-16 [AE0367, 0374].	testimony does not support this assertion.	
4 5 6 7	P94	From approximately 1995 to 2015, Creedence Clearwater Revisited did not pay the CCR Partnership any merchandise royalties.	Clifford Depo. at pp. 237:13-238:1 [AE0376-77]; compare Ex. 44 to Ex. 45 [AE0735-53].	Disputed. The testimony does not support the assertion.	
8 9 10 11	P95	Poor Boy does not have "the corporate man power to [sell merchandise at foreign shows]" and "hardly can deal with it in the states."	Deposition Transcript of Poor Boy Productions, Inc. at pp. 18:19- 19:8 [AE0445-46].	Disputed. Poor Boy does occasionally sell Revisited merchandise at Canada shows.	Poor Boy Depo. at 19:10-11 (AE0446).
12 13 14	P96	Poor Boy handles merchandising "all internally" and "doesn't generate a lot of revenue.	Cook Depo. at pp. 189:4-190:10 [AE0424-25].	Undisputed.	
15 16 17 18 19 20 21 22 23	P97	Aside from the 1995 license and the 2015 extension to Poor Boy Productions, Inc., the CCR partnership has not granted any other licenses to the Creedence Clearwater Revival mark.	Clifford Depo. at p. 160:1-16 [AE0357]; Cook Depo. at p. 124:13-17 [AE0414].	Disputed. The testimony does not support he assertion. The CCR Mark was licensed to Warner Home Video for use in the Woodstock box set that feature Creedence Clear Water Revival performances.	Woodstock Agreement, ¶ 2 (license under CCR Mark) (AE0709- 10); Cook Depo. at 82:18-83:4 (confirming license) (AE0409- 410).
24 25 26 27 28	P98	Stuart Cook, Douglas Clifford, and Patricia Fogerty have not, on behalf of the CCR Partnership, pursued licensing agreements with any third parties for the purpose of selling Creedence	Clifford Depo. at pp. 160:1-16; 162:11-21[AE0357-59]; Cook Depo. at pp. 124:18-21; 154:1-12 [AE0414, 0421].	Undisputed.	

-28-

	Clearwater Revival merchandise.			
P99	The Cook Parties did not pursue licensing agreements on behalf	Clifford Depo. at pp. 161:22-162:7; 162:11-163:1	Disputed. The cited testimony of Messrs. Cook and	Settlement Agreement, ¶¶ 2(a) and (c)(AE0612-
	of the CCR Partnership with any third parties	[AE0357-60];	Clifford does not support this	13); Cook Support Decl. ¶¶ 3-6
	for the purpose of selling Creedence Clearwater Revival	Cook Depo. at 124:18-21; 154:1-12 [AE0414,	assertion. The Cook Parties did not pursue third	(AE01072-74) (prohibited from third party
	merchandise because, "[they] have got plenty	0421].	party licensing agreements for	licensing); Clifford Support Decl., ¶ 3
	to do," "[they] have things that require lots		merchandise because they	(Fogerty would object and sue if
	of time," and had "been doing other		were contractually	merchandise was licensed)
	things."		prohibited from doing so and because John	(AE1065).
			Fogerty would object and bring	
			suit.	
P100	In 2011, Stuart Cook and Douglas Clifford	Clifford Depo. at pp. 163:2- 166:12	Disputed. Misleading and	Clifford Support Decl., ¶ 4, Ex. 75, Ex. F thereto
	John Fogerty for the creation and sale of	[AE0360-63] Ex. 75 at ¶ 18	incomplete. Clifford and Cook declined	(1065-66, AE0805).
	Creedence Clearwater Revival T-shirts and	[AE0800, 0805].	Fogerty's limited and vague	ALOGOS).
	other merchandise that could be sold by all		proposal for T- shirts only and	
	three former band members.		presented a counter offer for	
			licensing the CCR Mark to	
			third parties for sale through a website and at	
			retail. Fogerty declined.	
P101	Numerous bootleggers have been offering for	Clifford Depo. at pp. 145:19-152:19;	Disputed. Misleading. The	
	sale and selling unlicensed and	154:9-159:14 [AE0343-56];	witnesses had never seen the	
	unauthorized merchandise bearing	Ex. 67-74	websites shown to them at their	
	the Creedence Clearwater Revival	[AE0758-94];	deposition and there is no	

29

1		brand.	Cook Depo. at	evidence how	
2			150:4- 153:11	long the T-shirts	
			[AE0417-20]	have been offered for sale or	
3				whether any sales	
4				have been made.	
	P102	The CCR Partnership	Clifford Depo. at	Undisputed.	
5		does not derive any income from	pp. 145:19-152:19; 154:9-159:14		
6		unlicensed sales by	[AE0343-56];		
7		bootleggers.			
-			Cook Depo. at pp. 150:4- 153:11		
8			[AE0417-20]		
9	P103	Stuart Cook has	Cook Depo. at p.	Disputed.	Clifford Support
10		testified that the	152:13-18	Incomplete.	Decl., ¶ 4, Ex. 75,
		merchandising currently done by	[AE0419].	Fogerty declined an offer from	Ex. F thereto (1065-66,
11		unlicensed vendors		Cook and	AE0805).
12		"should be done		Clifford to sell	,
13		correctly by the		CCR merchandise	
		partnership."		through a website	
14				and at retail.	
15					
16		COUNTER-DEFENDANT	S COOK & CLIFF	ORD'S UNDISPUT	CED FACTS
Ī	Fact	Fact	Evidence	Opposing party's	Onnosing
17	No.	raci	Evidence	11 01 0	Opposing
				response	party's
18	1,0.			response	party's evidence
18 19		reedence Clearwater Reviv	al Partnership, And	-	evidence
ľ		reedence Clearwater Reviv	al Partnership, And CLEARWATER RE	Registration And A	evidence Assignment Of The
19 20	The Cr	reedence Clearwater Reviv		Registration And A	evidence Assignment Of The
19 20 21	The Cr	reedence Clearwater Revive CREEDENCE of The world famous musical group and partnership	Deposition of John C. Fogerty,	Registration And A	evidence Assignment Of The
19 20	The Cr	The world famous musical group and partnership Creedence Clearwater	Deposition of John C. Fogerty, June 8, 2016 ("J.	Registration And A	evidence Assignment Of The
19 20 21	The Cr	The world famous musical group and partnership Creedence Clearwater Revive Creedence Clearwater Revival ("CCR") was	Deposition of John C. Fogerty, June 8, 2016 ("J. Fogerty Dep.")	Registration And A	evidence Assignment Of The
19 20 21 22 23	The Cr	The world famous musical group and partnership Creedence Clearwater	Deposition of John C. Fogerty, June 8, 2016 ("J.	Registration And A	evidence Assignment Of The
19 20 21 22 23 24	The Cr	The world famous musical group and partnership Creedence Clearwater Revival ("CCR") was formed in 1968 and originally included Douglas Clifford	Deposition of John C. Fogerty, June 8, 2016 ("J. Fogerty Dep.") 13:7-17; 19:15-18 (AE0279-280).	Registration And A	evidence Assignment Of The
19 20 21 22 23	The Cr	The world famous musical group and partnership Creedence Clearwater Revival ("CCR") was formed in 1968 and originally included Douglas Clifford ("Clifford"), Stuart Cook	Deposition of John C. Fogerty, June 8, 2016 ("J. Fogerty Dep.") 13:7-17; 19:15-18 (AE0279-280). Jul 12, 1996,	Registration And A	evidence Assignment Of The
19 20 21 22 23 24	The Cr	The world famous musical group and partnership Creedence Clearwater Revival ("CCR") was formed in 1968 and originally included Douglas Clifford	Deposition of John C. Fogerty, June 8, 2016 ("J. Fogerty Dep.") 13:7-17; 19:15-18 (AE0279-280). Jul 12, 1996, Declaration of	Registration And A	evidence Assignment Of The
19 20 21 22 23 24 25 26	The Cr	The world famous musical group and partnership Creedence Clearwater Revival ("CCR") was formed in 1968 and originally included Douglas Clifford ("Clifford"), Stuart Cook ("Cook"), Tom Fogerty	Deposition of John C. Fogerty, June 8, 2016 ("J. Fogerty Dep.") 13:7-17; 19:15-18 (AE0279-280). Jul 12, 1996, Declaration of John C. Fogerty In Support of	Registration And A	evidence Assignment Of The
19 20 21 22 23 24 25 26 27	The Cr	The world famous musical group and partnership Creedence Clearwater Revival ("CCR") was formed in 1968 and originally included Douglas Clifford ("Clifford"), Stuart Cook ("Cook"), Tom Fogerty and John Fogerty	Deposition of John C. Fogerty, June 8, 2016 ("J. Fogerty Dep.") 13:7-17; 19:15-18 (AE0279-280). Jul 12, 1996, Declaration of John C. Fogerty In Support of Application for	Registration And A	evidence Assignment Of The
19 20 21 22 23 24 25 26	The Cr	The world famous musical group and partnership Creedence Clearwater Revival ("CCR") was formed in 1968 and originally included Douglas Clifford ("Clifford"), Stuart Cook ("Cook"), Tom Fogerty and John Fogerty	Deposition of John C. Fogerty, June 8, 2016 ("J. Fogerty Dep.") 13:7-17; 19:15-18 (AE0279-280). Jul 12, 1996, Declaration of John C. Fogerty In Support of	Registration And A	evidence Assignment Of The

-30-

1			Injunction ("1996	
2			J. Fogerty Decl.") ¶ ¶ 2-3 (AE0523-	
3			524).	
3	D2	CCR has sold tens of	2015 Clifford	Undisputed
4		millions of albums and singles in the United States	Decl., ¶¶ 6-8 (AE0797).	
5		alone, with hit records such	(1 LD0 1) 1.	
6		as "Born		
		on the Bayou," "Down on the Corner," "Fortunate		
7		Son," "Up Around the		
8		Bend" and "Heard it Through the Grapevine."		
9		CCR has been inducted		
10		into the Rock and Roll Hall		
ŀ	D3	of Fame. Tom Fogerty left CCR in	2015 Clifford	Undisputed
11		1971, and the band stopped	Decl. ¶ 4	Chaispatea
12		recording and formally	(AE0797).	
13		performing together in 1972.		
14	D4	Tom Fogerty passed away	1996 J. Fogerty	Undisputed
		in 1990.	Decl. ¶ 21 (AE0528).	
15				
16			Deposition of Patricia Fogerty,	
17			June 22, 2016	
18			("P. Fogerty	
			Dep.") 43:11-13 (AE0468).	
19	D5	Tom Fogerty's interest in	TM Assignment	Undisputed
20		CCR's property, including his interest in the service	(AE0555-559).	
21		mark CREEDENCE	August 9, 1991,	
22		CLEARWATER	letter from Harris	
23		REVIVAL and all associated goodwill, passed	Zimmerman (AE0726-728).	
		to his wife, Ms. Patricia	,	
24		Fogerty.	January 28, 1992, letter from Harris	
25			Zimmerman	
26			(AE0732-734).	
27			1996 J. Fogerty	
			Decl. ¶ 21	
28			(AE0528).	

31

D6	According to a sworn	1996 J. Fogerty	Undisputed	
	lawsuit against CCR's			
	attorneys that it "came to			
	ever been filed for the CCR			
	name," and "as a result," Tom Fogerty located an			
	attorney who "took care of			
	register the group's service			
D7	Fogerty was aware of and	1996 J. Fogerty	Disputed; the cited	1996 J.
	to register the	Deci. ¶¶ 16-17, Exhs. D-E	support the assertion	Fogerty Decl. ¶¶ 16-17, Ex.
	CLEARWATER	(AE0527,	that the application	D [AE0527, 0541-44]
	REVIVAL mark in the	AL0341-340).	"partnership"	0341-44]
D0	was being prosecuted.	D ::: 6	XX 1: 1.1	D.E.
D8	Fogerty's brother Robert	Robert Fogerty,	Robert Fogerty	R. Fogerty Dep. 72:21-
	Fogerty, who was John	June 24, 2016	delivered materials to	73:1 (stating Tom Fogerty,
	during the time when the	Dep.") 32:10-13,		not John
	1		Disputed as to insinuation that	Fogerty, requested
	early 1980's, delivered six		Robert Fogerty's	delivery of materials to
	trademark counsel to assist		are attributable to	trademark
	in registering the mark.			counsel) [AE0456-57].
			he delivered the	
			Fogerty's request.	
D9	The application matured into CCR's ILS	931 Reg. (AF0520-521)	Undisputed	
	Trademark Registration	,		
	No. 1222931 ("'931 Reg."), issued by the United States	1996 J. Fogerty Decl. ¶¶ 16-17		
	Patent and Trademark	(AE0527).		
	January 4, 1983, for the			
	D7	statement by Fogerty in 1996, it was during a prior lawsuit against CCR's former accountants and attorneys that it "came to our attention that no trademark registration had ever been filed for the CCR name," and "as a result," Tom Fogerty located an attorney who "took care of the necessary paperwork to register the group's service mark on behalf of the four members of CCR." D7 Fogerty was aware of and approved of the application to register the CREEDENCE CLEARWATER REVIVAL mark in the name of the partnership at the time the application was being prosecuted. D8 In fact, John and Tom Fogerty's brother Robert Fogerty, who was John Fogerty's office manager during the time when the trademark application was being prosecuted in the early 1980's, delivered six CCR album covers to trademark counsel to assist in registering the mark. D9 The application matured into CCR's U.S. Trademark Registration No. 1222931 ("931 Reg."), issued by the United States Patent and Trademark Office ("USPTO") on	statement by Fogerty in 1996, it was during a prior lawsuit against CCR's former accountants and attorneys that it "came to our attention that no trademark registration had ever been filed for the CCR name," and "as a result," Tom Fogerty located an attorney who "took care of the necessary paperwork to register the group's service mark on behalf of the four members of CCR." D7 Fogerty was aware of and approved of the application to register the CREDENCE CLEARWATER REVIVAL mark in the name of the partnership at the time the application was being prosecuted. D8 In fact, John and Tom Fogerty's brother Robert Fogerty, who was John Fogerty's office manager during the time when the trademark application was being prosecuted in the early 1980's, delivered six CCR album covers to trademark counsel to assist in registering the mark. D9 The application matured into CCR's U.S. Trademark Registration No. 1222931 ("931 Reg."), issued by the United States Patent and Trademark Office ("USPTO") on	statement by Fogerty in 1996, it was during a prior lawsuit against CCR's former accountants and attorneys that it "came to our attention that no trademark registration had ever been filed for the CCR name," and "as a result," Tom Fogerty located an attorney who "took care of the necessary paperwork to register the group's service mark on behalf of the four members of CCR." D7 Fogerty was aware of and approved of the application to register the CREEDENCE CLEARWATER REVIVAL mark in the name of the partnership at the time the application was being prosecuted. D8 In fact, John and Tom Fogerty's brother Robert Fogerty, who was John Fogerty's office manager during the time when the trademark application was being prosecuted in the early 1980's, delivered six CCR album covers to trademark counsel to assist in registering the mark. D8 The application matured into CCR's U.S. Trademark Registration No. 1222931 ("'931 Reg."), issued by the United States Patent and Trademark Office ("USPTO") on

1		Mark CREEDENCE			
2		CLEARWATER REVIVAL for			
3		"entertainment services— namely, a vocal and			
4		instrumental group" in International Class 41. The			
5		registration issued in the			
6		name of the CCR partnership.			
7	D10	In addition to the CCR Reg., CCR owns all	J. Fogerty Dep. 19:15-20:15,	Disputed; the 931 Reg. has been	Cook Depo. at pp. 124:22-
8		common law rights related to the Creedence	22:25-23:23, 33:10-21	abandoned and the identity of the	125:14 [AE0414-15].
9		Clearwater Revival Mark	(AE0280-281,	registrant is irrelevant.	[AL0414-13].
10		and its derivatives (collectively the "CCR	AE0283-285).	Additionally, the CCR band (and the	
11		Mark").		partnership consisting of the band's	
12				members) has not provided	
13				entertainment services	
14				as a vocal and instrumental group for	
15				25 years, and thus, the mark has been	
16				abandoned through non-use.	
17	D11	In or about February and	TM Assignment	Undisputed	
18		March 1992, Cook, Clifford, Fogerty and Ms.	(AE0555-559).		
19		Fogerty executed an Assignment of Trademark,	1996 J. Fogerty Decl. ¶ 21, Exh.		
20		which was subsequently	H (AE0528).		
21		recorded with the USPTO ("Assignment").			
22	D12	The Assignment states that "CREEDENCE	TM Assignment (AE0555-559).	Undisputed as to statement.	
23		CLEARWATER REVIVAL, a firm	1996 J. Fogerty	Disputed that an	
24		consisting of John Fogerty,	Decl. ¶ 21, Exh.	entity can "own" a	
25		Doug Clifford, Stu Cook and Tom Fogerty is the	H (emphasis added) (AE0528,	trademark, independent of use in	
26	D13	owner of" the CCR Mark. The Assignment also states	AE0552-554). TM Assignment	commerce. Undisputed	
27		that Tom Fogerty passed	(AE0555-559).	Ondisputed	
28		away and Ms. Fogerty is his sole heir.	1996 J. Fogerty		

-33-

1 2			Decl. ¶ 21, Exh. H (AE0528, AE0553-554).		
3	D14	The Assignment further provides "it is the intention of the parties and the purpose of this Assignment	TM Assignment (AE0555-559).	Undisputed as to statement.	See evidence associated
4 5			1996 J. Fogerty	Disputed in that statement conflicts	with P35-P44, above
6		to substitute Tricia Fogerty in the place and stead of the deceased Tom Fogerty <i>in</i>	H (emphasis	with the parties' intent and course of	[AE0727-34]
7		said partnership for the sole purpose of establishing	added) (AE0528, AE0552-554).	conduct. The 1992 Assignment was	
8		her ownership interest in and to said service mark		nothing more than an effort to secure	
9		and the registration thereon, and for no other		Patricia Fogerty's financial interest in	
10 11		purpose."		Tom Fogerty's estate after a 1991	
12				Assignment to that effect failed for	
13				wording reasons. The 1991 attempted	
14				assignment and letters from trademark counsel undermine	
15 16				assertion that the parties intended to	
17				make Patricia a partner.	
18	D15	Additionally, the Assignment states "the	TM Assignment (AE0555-559).	Undisputed as to statement.	See evidence associated
19		interest of said Tom Fogerty, solely in	1996 J. Fogerty	Disputed in that	with P35-P44, above
20		connection with his interest in the Service Mark:	Decl. ¶ 21, Exh. H (emphasis	statement conflicts with the parties' intent	[AE0727-34]
2122		CREEDENCE CLEARWATER	added) (AE0528, AE0552-554).	and course of conduct. The 1992	
23		REVIVAL and the registration thereon,		Assignment was nothing more than an	
24		together with the goodwill of the business with which said mark was used, <i>is</i>		effort to secure Patricia Fogerty's financial interest in	
25		hereby sold, transferred and assigned to		Tom Fogerty's estate	
2627		CREEDENCE CLEARWATER		Assignment to that effect failed for	
28		REVIVAL, a firm consisting of John		wording reasons. The 1991 attempted	
ľ	1				

Fogerty, Doug Clifford, Stu Cook and Tricia Fogerty, as heir to the deceased Tom Fogerty."		assignment and letters from trademark counsel undermine assertion that the parties intended to make Patricia a partner.	
he Partnership's License To		Of CREEDENCE CLEA	RWATER
	REVISITED		
On or about March 1, 1995, Clifford, Cook and Ms. Fogerty, a majority of the CCR partners, executed a Licensing Agreement ("License") on behalf of CCR, for a term of ten years with an option for an additional ten years, with Poor Boy Productions, Inc. ("Poor Boy"). Among other things, the License granted Poor Boy the right to use the name CREEDENCE CLEARWATER REVISITED ("REVISITED Mark"), in connection with musical performances.	License (AE0735-742). License (AE0736).	Undisputed that Clifford, Cook, and Ms. Fogerty on or about March 1, 2015 executed a purported license to Clifford and Cook's company, Poor Boy. Disputed that Ms. Fogerty is or ever was a CCR partner. Undisputed that the 1995 License purported to grant Poor Boy the right to use the name CREEDENCE CLEARWATER REVISITED in connection with musical performances. Disputed that the 1995 License was a	See evidence associated with P33-P45, above 1996 J. Fogerty Decl. ¶¶ 24-25 [AE0529-30].
John Fogerty was provided a copy of the Poor Boy License to review and sign but he objected to its terms and refused to sign it.	Declaration of Kenneth I. Sidle ("Sidle Decl."), ¶¶ 7-10, N-T (AE0572-573, AE0580- AE0610).	Disputed; John Fogerty's former counsel, Kenneth Sidle, was provided a copy of the Poor Boy License only <i>after</i> it was signed by	Declaration of Kenneth I. Sidle ("Sidle Decl."), ¶¶ 7- 10, N-Q [AE0569-610]
	,	Clifford, Cook, and	
	Stu Cook and Tricia Fogerty, as heir to the deceased Tom Fogerty." On or about March 1, 1995, Clifford, Cook and Ms. Fogerty, a majority of the CCR partners, executed a Licensing Agreement ("License") on behalf of CCR, for a term of ten years with an option for an additional ten years, with Poor Boy Productions, Inc. ("Poor Boy"). Among other things, the License granted Poor Boy the right to use the name CREEDENCE CLEARWATER REVISITED ("REVISITED Mark"), in connection with musical performances.	Stu Cook and Tricia Fogerty, as heir to the deceased Tom Fogerty." On or about March 1, 1995, Clifford, Cook and Ms. Fogerty, a majority of the CCR partners, executed a Licensing Agreement ("License") on behalf of CCR, for a term of ten years with an option for an additional ten years, with Poor Boy Productions, Inc. ("Poor Boy"). Among other things, the License granted Poor Boy the right to use the name CREEDENCE CLEARWATER REVISITED ("REVISITED Mark"), in connection with musical performances. John Fogerty was provided a copy of the Poor Boy License to review and sign but he objected to its terms and refused to sign it. Declaration of Kenneth I. Sidle ("Sidle Decl."), ¶¶ 7-10, N-T (AE0572-573, AE0580-	Stu Cook and Tricia Fogerty, as heir to the deceased Tom Fogerty." The Partnership's License To Poor Boy For Use Of CREEDENCE CLEAN REVISITED On or about March 1, 1995, Clifford, Cook and Ms. Fogerty, a majority of the CCR partners, executed a Licensing Agreement ("License") on behalf of CCR, for a term of ten years with an option for an additional ten years, with Poor Boy Productions, Inc. ("Poor Boy"). Among other things, the License granted Poor Boy the right to use the name CREEDENCE CLEARWATER REVISITED Among other things, the License granted Poor Boy the right to use the name CREEDENCE CLEARWATER REVISITED ("REVISITED Mark"), in connection with musical performances. John Fogerty was provided a copy of the Poor Boy License to review and sign but he objected to its terms and refused to sign it. John Fogerty was provided a copy of the Poor Boy License to review and sign but he objected to its terms and refused to sign it. Students and Tricia a parties intended to make Patricia a parties. License (Judisputed that Clifford, Cook, and Ms. Fogerty on or about March 1, 2015 executed a purported license to Clifford and Cook's company, Poor Boy. Disputed that the 1995 License was a valid grant. John Fogerty was provided a copy of the Poor Boy License to review and sign but he objected to its terms and refused to sign it. John Fogerty was provided a copy of the Poor Boy License only after it

STATEMENT OF UNCONTROVERTED FACTS

1				Tricia Fogerty and	
2				after Poor Boy was already operating	
				under the purported	
3				license. The "license	
4				agreement had never	
5				before been provided to or otherwise	
				disclosed to [Mr.	
6	D10		1006 I. F.	Sidle]"	
7	D19	Shortly after the License was executed, Poor Boy	1996 J. Fogerty Decl. ¶ 24	Undisputed	
8		began exploiting the	(AE0529-530).		
		REVISITED Mark,			
9		through live performances.			
10		The 1996 Action Regar	ding Plaintiffs' Use	of The REVISITED M	<u>[ark</u>
11	D20	O I I 2 1006 F	1006 G 1:4	TT 1' . 1	<u> </u>
12	D20	On July 2, 1996, Fogerty filed a Complaint in the	1996 Complaint (AE0870-	Undisputed	
		United States District Court	AE0891).		
13		Central District of			
14		California Western Division against Poor Boy,			
15		Cook, Clifford and Ms.			
		Fogerty styled <i>Fogerty v</i> .			
16		Poor Boy Productions, Inc., et al., Case No. CV			
17		96-4634 RMT (RNBx)			
18		alleging, among other			
19		things, that Fogerty was synonymous with the CCR			
		Mark and that there was			
20		therefore infringement and a likelihood of confusion			
21		regarding Fogerty's			
22		association with			
		CREEDENCE CLEARWATER			
23		REVISITED.			
24	D21	Fogerty also alleged that all	1996 Complaint,	Undisputed	
25		members of CCR had originally agreed that all	¶ 13 (AE0874- AE0875)		
26		decisions regarding the	,		
		group, including the use of	Sidle Decl., ¶ 9, Exhibit Q and T		
27		the CCR Mark, required unanimous (as opposed to	(AE0573,		
28		majority) consent.	AE0597-599,		
			-36-		

1			AE0606-		
2			AE0610).		
3	D22	Fogerty further alleged that	1996 Complaint,	Undisputed	
4		Messrs. Cook and Clifford had breached their	¶¶ 57, 65 (AE0884,		
5		fiduciary duties to Fogerty through self-dealing in the	AE0886).		
6		License with Poor Boy for			
7		use of the REVISITED name.			
8	D23	Fogerty did not allege, and indeed denied, that a	1996 Complaint, ¶ 16 (AE0875).	Disputed; the cited evidence does not	Sidle Decl., Ex. T
9		partnership existed.		support Defendant's assertion that John	[AE0606-10]
10				Fogerty denied a	
11				partnership existed.	
12				John Fogerty's position in 1995 was	
13				that CCR was "not a currently operating	
14	D04		1006 0 1	partnership."	
15	D24	Fogerty pled no breach of fiduciary with respect to	1996 Complaint (AE0870-	Undisputed.	
16		Clifford and Cook's alleged failure to	AE0891).		
17		affirmatively license the CCR Mark to any party			
18		other than Poor Boy.			
19	D25	Messrs. Clifford and Cook counterclaimed against	1996 Answer and Counterclaims, ¶¶	Undisputed that Messrs. Clifford and	
20		John Fogerty for breach of fiduciary duty and slander	93(a)-(d) and 97- 99 (AE0910-	Cook filed a counterclaim claiming	
21		for his: (a) mis-statements as to their role in the band;	914).	the stated allegations.	
22		(b) urging of the public to			
23		boycott CCR music; (c) actions to prevent Cook			
24		and Clifford from performing at the group's			
25		induction into the Hall of Fame; (d) actions to			
26		prevent the group's			
27		recorded performance at Woodstock to be included			
28		in a theatrical re-release of			

1		the historical film of that			
2		concert; and (e) false statements to USA Today			
3		that he taught Cook and			
4		Clifford "how to play their instruments."			
5	D26	As a predicate to their	1996 Answer and	Undisputed that Messrs. Cook and	See evidence
		breach of fiduciary duty claim, Messrs. Cook and	Counterclaims, ¶ 92 (AE0910).	Clifford alleged that	associated with P15-47,
6		Clifford alleged that there was a partnership		there was a partnership consisting	above
7		consisting of John Fogerty,		of John Fogerty,	
8		Cook, Clifford and Patricia Fogerty.		Cook, Clifford and Patricia Fogerty.	
9					
10				Disputed that such a partnership, with the	
11				inclusion Patricia Fogerty, in fact	
12	D05		1006	existed.	G: 11 - D - 1
13	D27	Fogerty denied the existence of this or any	1996 Answer to counterclaims, ¶	Undisputed that John Fogerty has denied	Sidle Decl., Ex.T
14		partnership in his Answer to the Counterclaims.	92 (AE1088); Sidle Decl.,	the existence of a partnership that	[AE0606-10]
15		to the Counterclamis.	Exhibit T	includes Patricia	
16			(AE0606- AE0610).	Fogerty.	
17			,	Disputed; John	
18				Fogerty's position was that CCR,	
				consisting of the original band	
19				members, was "not a	
20				currently operating partnership."	
21	D28	Furthermore, as an affirmative defense to the	1996 Answer to	Undisputed	
22		Counterclaims, Fogerty	Counterclaims, p. 7, ¶ 10 (emphasis		
23		asserted that if a partnership existed, Cook	added) (AE1093).		
24		and Clifford's "remedy for			
25		such claims is limited to an action in equity for			
26		dissolution of the alleged partnership."			
27	D29	Fogerty also sought and	October 11, 1996,	Undisputed	
28		obtained a preliminary injunction against the	Order Granting Preliminary		
•		y		<u> </u>	<u> </u>

-38-

1		Defendants in that action from performing under the	Injunction (AE0988-990).		
2		REVISITED Mark.	,		
3	D30	At the time of the 1996 lawsuit, Fogerty knew that	1996 J. Fogerty Decl. ¶ 24	Disputed; none of the cited evidence	CCR0000508- 511 [AE0833-
4		Cook and Clifford had not sought to license the CCR	(AE0529).	supports the assertion that, in 1996, John	37]
5 6		Mark to any party other than Poor Boy for a period	License (AE0735-742).	Fogerty knew that Cook and Clifford had	
7		of the 24 years since the band broke up, and that the	Declaration of	not sought to license the CCR Mark to any	
8		License did not mention or allow third-party licensing	Stuart Cook in Support of	party other than Poor Boy for a period of	
		by Poor Boy.	Motion for	the 24 years since the	
9			Summary Judgment ("Cook	band broke up.	
10			Support Decl."),	At minimum, Mr.	
11			¶¶ 2-3 (AE1072).	Fogerty was aware that Cook and	
12				Clifford had in 1984	
13				participated in seeking to license to	
14				David E. Dover.	
15				Poor Boy's alleged	
16				inability to engage in third party licensing is	
17				immaterial because	
				Messrs. Cook and Clifford, as CCR	
18				Partners, could still	
19				seek to license the CCR mark.	
20	D31	Fogerty also knew at the	1996 J. Fogerty	Undisputed as to	CCR0000508-
21		time of the 1996 lawsuit	Decl. ¶ 27	statement.	511 [AE0833-
22		that the CCR Mark had been "used exclusively to	(AE0530-531).	Disputed as to	37]
23		refer to the recordings and		insinuation that non-	
24		performances of CCR		exclusive licensing of the CCR Mark was	
25				not feasible or advisable. For	
26				example, in 1984, Mr.	
27				Fogerty was willing to enter into a non-	
				exclusive license with	
28				David E. Dover for	

1 2				Mr. Dover to arrange stage shows in tribute to CCR.	
3 4 5 6 7 8 9 10 11 12	D32	In the 1996 lawsuit, Fogerty testified that he always valued "the preservation of CCR's artistic integrity and reputation" over the opportunity to make more money by exploiting the CCR brand, and testified that it was "always his expressed belief that the value of an artist's work becomes diluted when combined with works by others and when used to advertise products."	1996 J. Fogerty Decl. ¶ 11 (emphasis added) (AE0526).	Disputed; John Fogerty made this statement with respect to including CCR master recordings in compilation recordings, advertisements, and film and television soundtracks. Defendant's cited evidence makes no mention of the "CCR brand" or marks.	1996 J. Fogerty Decl. ¶¶ 10-12 [AE0525-26].
13 14 15 16 17 18 19 20	D33	Fogerty testified that when the band was still together, "CCR did not agree to have commercial sponsors or tieins for any of its tours, nor did it consent to do endorsements of any products. We turned down hundreds of thousands of dollars offered to us for such commercial tie-ins and endorsements in an effort to maintain CCR's artistic integrity."	1996 J. Fogerty Decl. ¶ 29 (emphasis added) (AE0531).	Undisputed	
21 22 23 24 25 26 27 28	D34	Fogerty testified: "I have repeatedly made the other members of CCR well aware of my feelings about preserving the integrity of CCR's name and reputation, and it is especially distressing to me when I become aware of efforts by them to essentially 'sell out' CCR's artistic integrity in exchange for the promise of a few additional	1996 J. Fogerty Decl. ¶ 30 (AE0531).	Undisputed as to statement. Disputed as to insinuation that John Fogerty prevented Messrs. Cook and Clifford from engaging in licensing activities. As a preliminary matter, Messrs. Clifford and Cook have maintained that they do not	Sidle Decl., Exs. N and O [AE0580-92] Clifford Depo. at pp. 73:20- 74:2; 161:22- 162:1 [AE0332-33, 0358-59]; Cook Depo. at p. 23:10-18 [AE0387].

40

1		dollars."		believe that they need	
2				Mr. Fogerty's	P. Fogerty
2				consent, but rather,	Depo. at Ex.
3				they believe that the consent of the	40 [AE0708-
				majority members of	24]
4				CCR is "sufficient"	CCR0000508-
5				for any action they	511 [AE0833-
				wish to take on behalf	37]
6				of CCR. Moreover,	1
7				John Fogerty was not	
′				opposed to properly	
8				exploiting the CCR	
9				brand or licensing activities as	
9				exemplified by: (1)	
10				his willingness license	
11				to Warner Home	
11				Video the right to use	
12				the CCR name and	
12				videotape footage of	
13				members of CCR from their show at	
14				Woodstock; (2) his	
1.5				willingness to license	
15				to David E. Dover the	
16				right to arrange stage	
17				shows in tribute to	
17				CCR; and (3) his	
18				willingness to agree to terms upon which he	
10				would consent to	
19				Cook and Clifford's	
20				use of the CCR name.	
21	D35	Messrs. Clifford and Cook	Cook Support	Disputed; John	Sidle Decl.,
21		reasonably relied on	Decl. ¶¶ 2-4, 6	Fogerty did not	Exs. N and O
22		Fogerty's statements, and the position Fogerty took	(AE1072-074).	prevent Messrs. Clifford and Cook	[AE0580-92]
22		for <i>nearly thirty-five years</i>		from maximizing the	Clifford Depo.
23		by the time of the 2001		value of the CCR	at pp. 73:20-
24		Settlement Agreement, and		brand and mark. As	74:2; 161:22-
25		for fourteen years		Messrs. Clifford and	162:1
25		thereafter, on his		Cook have	[AE0332-33,
26		opposition to exploiting the		maintained, they do	0358-59];
27		CCR brand. Accordingly, they only licensed the CCR		not believe that they need Mr. Fogerty's	Cook Depo. at
27		Mark to Poor Boy, which		consent, but rather,	p. 23:10-18
28		itself resulted in extensive		they believe that the	[AE0387].
Ī			<u> </u>		

41

1		litigation with Fogerty.		consent of the	
2				majority members of CCR is "sufficient"	P. Fogerty Depo. at Ex.
3				for any action they	40 [AE0708-
				wish to take on behalf of CCR. Moreover,	24]
4				John Fogerty was not	CCR0000508-
5				opposed to properly	511 [AE0833-
6				exploiting the CCR brand or licensing	37]
7				activities as	
				exemplified by: (1) his willingness license	
8				to Warner Home	
9				Video the right to use	
10				videotape footage of members of CCR	
11				from their show at	
12				Woodstock; (2) his willingness to license	
				to David E. Dover the	
13				right to arrange stage shows in tribute to	
14				CCR; and (3) his	
15				willingness to agree to	
16				terms upon which he would consent to	
				Cook and Clifford's	
17				use of the CCR name.	
18	The N	Ninth Circuit Reverses The D	District Court's Gra	nt Of A Preliminary In	junction, And
19		The P	arties Settle The 19	96 Action	
20	D36	The Ninth Circuit Court of	9 th Circuit Order	Undisputed	
21		Appeals reversed the district court's order	(AE0566-568).		
		granting Fogerty a			
22		preliminary injunction, in			
23		an unpublished opinion in Fogerty v. Poor Boy			
24		Productions, Inc., et al.,			
25		124 F.3d 211 (9th Cir. 1997), finding that there			
26		was no evidence that the			
		American public believed that Fogerty was associated			
27		with CREEDENCE			
28		CLEARWATER			

1		REVISITED.			
	D37	The Ninth Circuit also	9 th Circuit Order	Disputed; in a	9 th Circuit
2		found that Fogerty could	(AE0568).	footnote, and as dicta,	Order
3		not sue for trademark		the Ninth Circuit	[AE0566-68].
		dilution under the Lanham Act since the CCR		stated that "[a]s and individual partner in	
4		partnership owned the CCR		the partnership that	
5		Mark.		owns the Creedence	
6				mark Fogerty	
				cannot sue on his own behalf for 'trademark	
7				dilution' under	
8				section 43(c) of the	
9				Lanham Act The record does not	
				support Fogerty's	
10				efforts to deny that a	
11				partnership owns the	
				mark or that it makes decisions regarding	
12				the mark by majority	
13				vote. However, we	
14				need not resolve this	
				issue to determine whether Fogerty is	
15				likely to prevail on	
16				his section 43(a)	
17	D38	The Ninth Circuit further	9 th Circuit Order	claim." Disputed; in a	9 th Circuit
	D36	found that "the record does	(AE0568).	footnote, and as dicta,	Order
18		not support Fogerty's		the Ninth Circuit	[AE0566-68]
19		efforts to deny that a		stated "The record	
20		partnership owned the mark or that it makes		does not support Fogerty's efforts to	
		decisions regarding the		deny that a	
21		mark by majority vote."		partnership owns the	
22				mark or that it makes decisions regarding	
23				the mark by majority	
				vote. <i>However</i> , we	
24				need not resolve this issue to determine	
25				whether Fogerty is	
26				likely to prevail on	
				his section 43(a)	
27	D39	After the Ninth Circuit	Settlement	claim." Undisputed	
28		reversed the district court's	Agreement	Charspatea	
				•	

43

1		preliminary injunction	(AE0612-614).		
2		order, through counsel, the parties entered into a			
3		settlement agreement ("Settlement Agreement")			
4		on or about January 9,			
5		2001 that resulted in a dismissal with prejudice of			
		the action.			
6	D40	The parties agreed in paragraph 1 of the 2001	Settlement Agreement, ¶ 1	Undisputed	
7		Settlement Agreement to	(AE0612).		
8		dismiss their claims and counterclaims with			
9		prejudice.			
10	D41	To that end, the parties submitted a stipulation to	January 19, 2001, Stipulation and	Undisputed the parties submitted a	See 2001 Settlement
11		dismiss the case with	Order Re:	stipulation to dismiss	Agreement
12		prejudice, on January 19, 2001.	Dismissal of Action With	the 1996 case with prejudice,	generally [AE0611-14].
13			Prejudice, entered by the Court on	Disputed as to	
14			January 26, 2001	insinuation that the	
			("1996 Stip and Order to	stipulation to dismiss was solely based on	
15			Dismiss")	paragraph 1 of the	
16			(AE0992-994).	2001 Settlement Agreement.	
17	D42	The District Court, the	1996 Stip and	Undisputed	
18		Honorable Robert M. Takasugi presiding (now	Order to Dismiss (AE0992-994).		
19		deceased) ordered	(2220002000).		
20		dismissal on January 26, 2001 and it was entered by			
21		the clerk on January 29, 2001.			
22	D43	Pursuant to Paragraph 2(a)	Settlement	Disputed; paragraph	Settlement
23		of the Settlement Agreement, Fogerty further	Agreement, ¶ 2(a) (AE0612).	2(a) of the Settlement Agreement only	Agreement, ¶ 2(a) [AE0612]
24		agreed to withdraw his		provides: "John will	(/ L - J
		objection to Poor Boy, Clifford's and Cook's		withdraw his objection to Messrs.	
25		performing and selling merchandise under the		Clifford's and Cook's performing under the	
26		REVISITED Mark in		name 'Creedence	
27		exchange for a one-time \$100,000 payment and		Clearwater Revisited."	
28		ongoing royalties.		recytotted.	
	I				

44

1	D44	Fogerty admits that "the	Fogerty's	Disputed insofar as	Fogerty ROG
		Settlement Agreement	Responses and	the evidence	Responses
2		obligated Fogerty to	Objections to	presented is	14:8-19
3		request dismissal of the	First Set of	incomplete and/or out	[AE0260].
		pending lawsuit and served	Interrogatories	of context. Mr.	
4		as a covenant not to sue" or	("Fogerty ROG	Fogerty's statement	
_		"not to initiate a lawsuit for the same claims of	Responses"),	continues "In other	
5		Breach of Fiduciary Duty.	14:8-15; 18:6-15 (AE0260,	words, the Settlement Agreement obligated	
6		against the defendants to	AE0264).	Mr. Fogerty to request	
_		that action."	7120201).	dismissal of the	
7				pending lawsuit and	
8				served as a covenant	
				not to sue with respect	
9				to the core contention	
10				contained in that	
10				lawsuit: namely, that	
11				Cook and Clifford	
10				were improperly using the 'Creedence'	
12				name to describe a	
13				band that did not	
				include Mr. Fogerty."	
14	D45	The parties also agreed that	Settlement	Undisputed as to	Settlement
15		Clifford, Cook and Ms.	Agreement, $\P 2(c)$	language of	Agreement, ¶
13		Fogerty "will not	(AE0612-613).	Settlement	2(c)
16		authorize" any other		Agreement.	[AE0612].
17		persons or entities to		D: 1 1	
17		perform under the names		Disputed as to	
18		CREEDENCE, CREEDENCE		insinuation that this provision prohibits	
1.0		CLEARWATER or any		Defendants from	
19		derivative of those names		pursuing licensing	
20		without the prior written		opportunities to which	
		permission of Fogerty,		John Fogerty could	
21		"which may be granted or		consent.	
22		withheld in John's sole			
22		discretion."			
23	D46	Qualifying this language,	Settlement	Undisputed	
24		the Settlement Agreement	Agreement, \P 2(c)		
24		states: "In other words, the 'license' to Messrs.	(AE0612-613).		
25		Clifford and Cook is a one-			
		time thing, personal to			
26		them jointly and not			
27		available for sublicensing			
		or assignment."			
28	D47	The Settlement Agreement	Settlement	Disputed; the 2001	

45

1		also prohibits Poor Boy, Clifford and Cook from	Agreement, ¶ 2(b) (AE0612).	Settlement agreement prohibits Poor Boy,	
2		selling merchandise under any name other than		Clifford, and Cook from selling	
3		REVISITED.		merchandise under any name other than	
4				REVISITED "in	
5				connection with their performing and	
6				performing-related	
7				activities."	
8	Foger	ty's Behavior, And Plaintiffs			ions, Since The
9		<u>20</u>	01 Settlement Agre	<u>eement</u>	
10	D48	Because the Settlement	Cook Support	Disputed; Clifford	P. Fogerty
11		Agreement prohibits Clifford and Cook from	Decl. ¶¶ 3-6 (AE1072-074).	and Cook's alleged belief, if true, was not	Depo. at Ex. 40 [AE0708-
		using any variation of the		reasonable as John	24]
12		CCR Mark except the REVISITED Mark or	Declaration of Douglas Clifford	Fogerty had previously agreed to	CCR0000508-
13		authorizing third parties	in support of	licensing with third	511 [AE0833-
14		from using the CCR Mark without prior written	Motion for Summary	parties (i.e. licensing to Warner Home	37]
15		approval from Fogerty,	Judgment ("2017	Video the right to use	
16		Clifford and Cook reasonably believed they	Clifford Support Decl."), ¶ 3	videotape footage of members of CCR	
17		could not actively license	(AE01065).	from their show at	
		the CCR Mark to third parties.		Woodstock and agreeing to license to	
18				David E. Dover the	
19				right to arrange stage shows in tribute to	
20				CCR)	
21	D49	Although Clifford and	Woodstock	Undisputed	
22		Cook did not actively seek third-party licensing	Agreement, ¶ 2 (AE0709-710).		
23		opportunities, all four			
24		partners agreed to license the CCR Mark to Warner	Deposition of Stuart Cook		
25		Home Video for use in a	("Cook Dep."),		
		40 th Anniversary Woodstock Box Set that	July 14, 2016, 82:18-83:4		
26		featured Creedence	(AE0409-410).		
27		Clearwater Revival performances.			
28	D50	Significantly, Fogerty has	2017 Clifford	Disputed; As John	P. Fogerty
			16		

-46-

1		at no time since the 2001	Support Decl. ¶ 4	Fogerty's actions	Depo. at Ex.
2		Settlement Agreement or prior to this lawsuit	(AE1065-066).	indicate, he was not opposed to licensing.	40 [AE0708- 24]
3		expressed a position	Cook Support	He had previously	CCP0000500
4		contrary to his clearly stated opposition to	Decl. ¶ 6 (AE1073-074).	agreed to licensing with third parties (i.e.	CCR0000508- 511 [AE0833-
		licensing, or approached		licensing to Warner	37]
5		Cook, Clifford or Patricia Fogerty about licensing the		Home Video the right to use videotape	Ex. 75 (2015
6		CCR Mark.		footage of members	Clifford. Decl.
7				of CCR from their show at Woodstock	¶ 18; Exhibit F thereto)
8				and agreeing to	[AE0800,
9				license to David E.	0805]
				Dover the right to arrange stage shows	
10				in tribute to CCR).	
11				John Fogerty, through	
12				his counsel, has	
13				approached Cook and Clifford regarding	
14				monetization of the	
				CCR Mark through a merchandising plan	
15				that Cook and	
16				Clifford rejected.	
17	D51	In fact, prior to this lawsuit,	2015 Clifford	Undisputed that, in	
18		the only proposal Fogerty has brought to the	Decl. ¶ 18; Exhibit F thereto	2011, John Fogerty, through his counsel,	
19		partnership for	(AE0800,	approached Cook and	
20		consideration regarding use of the mark since the	AE0804-805).	Clifford regarding a joint concert	
21		Settlement Agreement was	J. Fogerty Dep.	merchandising plan.	
		executed was a 2011 inquiry about creating	73:15-18 (AE0292).	Disputed to the extent	
22		merchandise that both Fogerty and Poor Boy	,	Defendants insinuate that Mr. Fogerty	
23		could sell at their		needs to ask for	
24		respective concerts.		permission for	
25		Fogerty did not then and has not since asked for		description and protected uses of CCR	
26		permission to use the CCR		Mark.	
27		Mark in connection with his live performances.			
	D52	Cook and Clifford	2015 Clifford	Disputed; Cook and	F 75 (2015
28		countered with a proposal	Decl. ¶ 18;	Clifford rejected John	Ex. 75 (2015

1 2		that this type of merchandise be sold on a collectively controlled	Exhibit F thereto (AE0800, AE0804-805).	Fogerty's proposal regarding a joint concert	Clifford. Decl. ¶ 18; Exhibit F thereto)
3		website, but Fogerty declined.		merchandising plan. The cited evidence	[AE0800, 0805]
4				does not support the assertion that John	
5 6				Fogerty declined Cook and Clifford's	
7				counterproposal.	
8	D53	Along with the proposal, Cook and Clifford	2015 Clifford Decl. ¶ 18;	Disputed; The cited evidence does not	
9		informed Fogerty about concerns regarding	Exhibit F thereto (AE0800,	support the assertion that John Fogerty	
10		bootlegging and unlicensed	AE0804-805).	declined Cook and	
11		uses, and a proposed mechanism to stop it.		Clifford's counterproposal.	
12		Fogerty did not agree to Clifford and Cook's			
13	D54	proposal. Clifford and Cook also	2015 Clifford	Undisputed but	Clifford Depo.
14	D34	proposed to seek, along	Decl. ¶ 18;	immaterial; the fact	at pp. 73:20-
15		with Fogerty, opportunities to sell merchandising	Exhibit F thereto (AE0800,	that the parties did not come to an agreement	74:2; 161:22- 162:1
16		through retail outlets. Fogerty did not agree to	AE0804-805).	regarding any specific proposal does not	[AE0332-33, 0358-59;
17		this proposal either.	2017 Clifford Support Decl. ¶ 4	mean that the majority partners did not have	Cook Depo. at
18			(AE1065-066).	a duty to maximize	p. 23:10-18
19				revenues to the partnership.	[AE0387].
20				Clifford and Cook	
21				maintained that because they	
22				constituted the majority of the	
23				partners, they did not	
24				need Fogerty's approval in order to	
25				make partnership decisions.	
26	D55	In connection with the Settlement Agreement,	Settlement Agreement	Disputed; the 2001 Settlement Agreement	2001 Settlement
27		Fogerty did not raise the	(AE0612-614).	is in fact a three-page	Agreement at
28		issue of winding up the partnership, and the		letter with several material terms. It	pp. 2-3 [AE0611-14].
	1				

48

1		Settlement Agreement		expressly	
2		therefore did not provide for any winding up.		contemplated a long- form agreement,	
		Tot any winding up.		which Cook and	
3				Clifford did not	
4	DCC	A 4 41 4 C1: CC 1 1	Tr. 1 1	pursue.	G: 11 D 1
5	D56	At the time Clifford and Cook entered into the	Trademark Registration	Undisputed that John Fogerty was a partner	Sidle Decl., Ex. T
		License and at the time	(AE0521).	in the CCR	[AE0606-10]
6		they entered into the		Partnership.	
7		Settlement Agreement, and through the present date,	Assignment (AE0556-559).	Disputed that the	See evidence associated
8		Fogerty was and is a	(AL0330-337).	CCR partnership is an	with P15-47,
		copartner in the CCR		ongoing concern. The	above
9		partnership for at least purposes of ownership of		partnership was dissolved by	
10		the CCR Mark and the 931		operation of law upon	
11		Reg.		Tom Fogerty's death	
				and has not been operational for	
12				numerous years.	
13				Disputed that the	
14				CCR partnership reformed with Patricia	
15				Fogerty in place of	
				Tom Fogerty.	
16	D57	Based on Fogerty's	Cook Support	Disputed; The 1992	See evidence
17		affirmative representations	Decl. ¶ 7	Assignment was	associated
18		through the Assignment	(AE1074).	nothing more than an	with P33-45,
		and his subsequent conduct,	2017 Clifford	effort to secure Patricia Fogerty's	above
19		Plaintiffs reasonably	Support Decl. ¶ 3	financial interest in	
20		believed that Fogerty was	(AE1065).	Tom Fogerty's estate	
21		and is a copartner in the CCR partnership.		after a 1991 Assignment to that	
22		cere paraneromp.		effect failed for	
				wording reasons. The	
23				1991 attempted assignment and letters	
24				from trademark	
25				counsel undermine	
				assertion that the parties intended to	
26				make Patricia a	
27	D.50	D		partner.	<u> </u>
28	D58	Fogerty stated in the Assignment that a	Assignment (AE0556-559).	Disputed; The 1992 Assignment was	See evidence associated
20		1331giiiiont mat a	(11L0330-337).	1 1331gilliont was	associated

-49-

1 2 3 4		partnership existed and that he was a copartner in the partnership.		nothing more than an effort to secure Patricia Fogerty's financial interest in Tom Fogerty's estate after a 1991 Assignment to that	with P33-45, above
5				effect failed for wording reasons. The	
7				1991 attempted assignment and letters	
8				from trademark counsel undermine	
9				assertion that the parties intended to	
10				make Patricia a partner.	
11 12	D59	Fogerty has acted as a copartner in matters concerning ownership of the CCR Mark and 931	Assignment (AE0556-559). Woodstock	Disputed; The 1992 Assignment was nothing more than an effort to secure	See evidence associated with P33-45, above
13		Reg. since at least 1992.	Agreement	Patricia Fogerty's	
14			(AE0709-725).	financial interest in Tom Fogerty's estate	Ex. 40 Woodstock
15			Cook Support Decl. ¶ 7	after a 1991 Assignment to that	Agreement [AE0708-24]
16 17			(AE1074).	effect failed for wording reasons. The 1991 attempted	
18				assignment and letters from trademark	
19				counsel undermine	
20				assertion that the parties intended to	
21				make Patricia a partner.	
22				John Fogerty signed	
23				the Woodstock	
24				agreement in his own name.	
25	D60	Fogerty's actions include Fogerty's licensing the	Woodstock Agreement, ¶ 2	John Fogerty signed the Woodstock	Ex. 40 Woodstock
26		CCR Mark as a copartner.	(AE0709-710).	agreement in his own	Agreement
27			Cook Dep. 82:18-	name.	[AE0708-24]
28			83:4 (AE0409- 410).		

-50-

		T	T	T	
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	D61	Clifford and Cook relied on Fogerty's express representations and course of conduct that he was a copartner in the CCR partnership from at least the time of the Assignment and through the present date. Indeed, given Fogerty's acknowledgement of the partnership that includes Patricia Fogerty through the Assignment, and the Ninth Circuit's finding that the record supported the existence of a partnership, Clifford and Cook would not have agreed to settle the 1996 action if they anticipated Fogerty would claim or sue for dissolution of partnership, and windup.	Cook Support Decl. ¶ 7 (AE1074). 2017 Clifford Support Decl. ¶ 3 (AE1065). Cook Support Decl. ¶ 5 (AE1073). 2017 Clifford Support Decl. ¶ 3 (AE1065).	Disputed; The partnership was dissolved by operation of law upon Tom Fogerty's death and has not been operational for numerous years. The 1992 Assignment was nothing more than an effort to secure Patricia Fogerty's financial interest in Tom Fogerty's estate after a 1991 Assignment to that effect failed for wording reasons. Disputed; The 1992 Assignment was nothing more than an effort to secure Patricia Fogerty's financial interest in Tom Fogerty's financial interest in Tom Fogerty's estate after a 1991 Assignment to that effect failed for wording reasons. The 1991 attempted assignment and letters from trademark counsel undermine	Sidle Decl., Ex. T [AE0606-10] See evidence associated with P33-45, above See evidence associated with P33-45, above 9th Circuit Order [AE0566-68]
18 19		the 1996 action if they anticipated Fogerty would claim or sue for dissolution of partnership, and wind-		wording reasons. The 1991 attempted assignment and letters from trademark	
21 22		ир.		assertion that the parties intended to make Patricia a partner.	
2324				The Ninth Circuit stated: "The record does not support	
252627				Fogerty's efforts to deny that a partnership owns the mark or that it makes	
2728				decisions regarding the mark by majority	

1 2				vote. However, we need not resolve this issue to determine	
3				whether Fogerty is likely to prevail on	
4				his section 43(a) claim."	
5				Dissolution occurred	
7				by operation of law.	
8		The Par	rties' Allegations Ir	This Case	
9	D63	In their Second Amended	SAC, ¶¶ 24-33	Undisputed that	
10		Complaint, Plaintiffs (the partnership Creedence	(AE0007- AE0010).	Defendants make such allegations	
11		Clearwater Revival, Clifford, Cook, Patricia	,		
12		Fogerty and Poor Boy) allege in relevant part that			
13		John Fogerty has (a)			
14		infringed on the CCR Mark and (b) breached the			
15		parties' 2001 Settlement Agreement by stating that			
16		Poor Boy, Clifford and Cook's use of the			
17		"Revisited" name "breaks a longstanding band			
18		agreement."			
19	D64	They allege, among other	SAC ¶¶ 35-46,	Undisputed that	
20		things, trademark infringement and unfair	50-62 (AE0010- 014).	Defendants make such allegations	
21		competition, breach of contract and the implied			
2223		covenant of good faith and fair dealing, and breach of			
24	D65	fiduciary duty. In his Answer to the	Counterclaims ¶¶	Undisputed	
25		Second Amended	7-20 (AE0080-	Champatea	
26		Complaint, John Fogerty alleges counterclaims for	082).		
27		breach of fiduciary duty and for judicially			
28		supervised winding up of the partnership.			
			52		

1	D66	In direct contrast to his allegations and denial in	Counterclaims ¶¶ 8-9 (AE0080).	Disputed; John Fogerty's position in	Sidle Decl., Ex. T
2		the 1996 action, Fogerty	, ,	1995 was that CCR	[AE0606-10]
3		now alleges that the original band members	Fogerty ROG Responses,	was "not a currently operating	
4		(John Fogerty, Tom Fogerty, Clifford and	19:16-19 (AE0265).	partnership." This is consistent with John	
5		Cook) formed a California	(AL0203).	Fogerty's present	
6		partnership that existed until at least 1990.		position.	
7	D67	Fogerty further alleges that the partnership dissolved	Counterclaims ¶¶ 8-9 (AE0080).	Undisputed	
8		by operation of law under	,		
9		the Uniform Partnership Act then in effect in	Fogerty ROG Responses,		
10		California when Tom Fogerty passed away in	19:21-25 (AE0265).		
11		1990.			
12	D68	Fogerty also alleges in paragraph 10 that, since the	Counterclaims, ¶ 10 (AE0080).	Undisputed	
13		death of Tom Fogerty, Clifford and Cook have	Fogerty ROG		
14		failed to wind up the	Responses, 16:2-		
15		partnership and "instead have used their majority	6 (AE0262).		
		control to usurp the assets			
16		and business opportunities of the partnership for their			
17		own benefit, and to the exclusion of John Fogerty."			
18	D69	However, Fogerty himself	J. Fogerty Dep.	Disputed as to	Fogerty ROG
19		never sought to wind up the original CCR partnership	65:8-12 (AE0291).	insinuation that John Fogerty had any	Responses 9:5- 15 [AE0255].
20		prior to this lawsuit.		ability to wind up the CCR partnership.	
21				Since the death of	
22				Tom Fogerty in 1990, Cook and Clifford	
23				have held majority control of the	
24				partnership and	
25				assumed total decision-making	
26	D70	Singa the Cottlement	Cook Covers and	power.	2001
27	D70	Since the Settlement Agreement and until	Cook Support Decl. ¶¶ 2, 4-5, 7	Disputed; the 2001 Settlement Agreement	2001 Settlement
28		Fogerty raised them in this case, Fogerty never	(AE1072-074).	is in fact a three-page letter with several	Agreement, pp. 2-3
- 1	-	1			11

-53-

1		disclosed to Plaintiffs that	2017 Clifford	material terms. It	[AE0611-14]
2		he claimed no second	Support Decl. ¶ 3	expressly	G: 11 D 1
		partnership with Patricia Fogerty existed and that the	(AE1065).	contemplated a long- form agreement,	Sidle Decl., Ex. P
3		original Creedence		which Cook and	[AE0593-96]
4		Clearwater Revival		Clifford did not	
		partnership that included		pursue.	
5		Tom Fogerty must be			
6		wound up.		John Fogerty, through his counsel, had	
				previously questioned	
7				Cook and Clifford	
8				regarding the status of	
0				the partnership: "If	
9				there is a written partnership agreement	
10				evidencing the	
11				partnership 'governed	
				by a simple majority'	
12				to which your	
13				Licensing Agreement refers, we would	
				appreciate it if you	
14				would send to us a	
15				copy of that written	
16				agreement as soon as possible. Even if the	
				group was a	
17				partnership as recited	
18				in your purported Licensing Agreement,	
				the dissolution of the	
19				partnership, absent	
20				some agreement to the	
21				contrary, results in the transfer of partnership	
				assets such as the	
22				name to the individual	
23				members of the	
24				group"	
25	D71	Fogerty claims that	Fogerty ROG	Undisputed	
26		Clifford and Cook began	Responses,		
		breaching their fiduciary duties to Fogerty since	15:27-16:6 (AE0261-262).		
27		1990 when Tom Fogerty	(1110201-202).		
28		passed away.			

-54-

1	D72	In that regard, Fogerty	Counterclaims, ¶	Undisputed	
2		alleges that Clifford and Cook have co-opted for	11 (AE0080- 081).		
3		themselves the benefits of	001).		
3		the partnership assets by	Fogerty ROG		
4		"authorizing themselves (and only themselves) to	Responses, 16:6-14 (AE0262).		
5		utilize the CCR brand and	11 (1120202).		
6		marks, while fully aware			
		that they do not have the ability to maximize the			
7		value of the brand and			
8		marks, and that the revenues attributable to			
9		their own personal touring			
10		efforts would be a small fraction of the sum that			
11		could be obtained had they			
		exercised their fiduciary			
12		duty to maximize the value of the assets for all of the			
13		partners."			
14	D73	This allegation specifically refers to the 1995 License	Counterclaims, ¶ 11 (AE0080-	Disputed; John Fogerty's	Counterclaims, ¶ 11 [AE0080-
15		Agreement that authorized	081).	counterclaim is	81].
		performances and		broader in scope,	
16		merchandising using the CCR Mark.		including the assertion that Cook	
17				and Clifford do not	
18				have the ability to maximize the value of	
19				the brand and marks	
	D74	However, until this lawsuit, Fogerty has never raised	Cook Support Decl. ¶ 6	Disputed; for	CCR0000506 [AE0832]
20		with Clifford or Cook any	(AE1073-074).	example, in 1984, John Fogerty	[AE0632]
21		concern that the partnership	2017 Clifford	advocated for	
22		is not fully exploiting the CCR Mark.	Support Decl. ¶ 3	pursuing licensing activity of the CCR	
23			(AE1065).	Mark in order to	
24				"establish a value to the CCR name."	
25	D74A	Clifford and Cook have	Cook Support	Disputed; the CCR	See See
		been prejudiced by Fogerty's long delay in	Decl. ¶¶ 5, 8 (AE1073-074).	partnership has not been operational for	evidence associated
26		asserting his counterclaims	,	many years and	with P48-57,
27		in this case.	2017 Clifford Support Decl. ¶ 3	therefore a winding up now is not	above
28			(AE1065).	prejudicial.	2001

-55-

1					Settlement
2				John Fogerty's	Agreement
				counterclaim for breach of fiduciary	[AE0611-14]
3				duty does not affect	
4				Cook and Clifford's	
4				right to perform under	
5				the Revisited name	
6				pursuant to the 2001	
0				Settlement	
7	D75	Although it was not	Martin Report	Agreement. Disputed; John	Counterclaims
8		specifically pled in his	(AE0996-1026).	Fogerty pled that	[AE0079-83].
		pleading or disclosed in his	,	Cook and Clifford	
9		discovery responses,	Counterclaim	breached their	
10		Fogerty attempts to now	(AE0079-083).	fiduciary duties by	
		present expert testimony that alleges that Clifford	Fogerty ROG	failing to "maximize the value of the brand	
11		and Cook should also have	Responses	and marks", which	
12		been licensing the CCR	(AE0247-275).	could have been	
1.2		Mark to third parties from		accomplished through	
13	D76	2001 to the present.	Mantin Danant n	licensing activities.	Montin Donont
14	D76	In fact, Fogerty's expert states he is prepared to	Martin Report, p. 3 (AE1000)	Disputed; damages to John Fogerty are 25%	Martin Report, p. 23
15		testify that the partnership	<i>3</i> (1121000)	of the damages to the	[AE1020].
13		owes Fogerty \$45 to \$50		CCR partnership (i.e.	
16		million in damages for not		\$11.25- \$12.5	
17		fully exploiting the CCR brand.		million)	
ŀ	D77	Specifically, Fogerty's	Martin Report	Undisputed	
18		expert states he is prepared	generally, and	Charspacea	
19		to testify that the	summary on p. 11		
		partnership has lost	(AE1008).		
20		revenue opportunities, by: (1) not engaging in online			
21		and retail merchandising;			
22		(2) not licensing the CCR			
		brand for Broadway-type			
23		theatrical shows; (3) not licensing the CCR brand			
24		for Las Vegas-type shows;			
25		(4) not charging a higher			
۷3		royalty rate to Poor Boy,			
26		despite the fact that Fogerty agreed to the rate			
27		he is paid through the			
		Settlement Agreement; (5)			
28		not going after bootleggers.			

-56-

1	D77A	Clifford and Cook's expert	Sloane Report	Undisputed that Mr.	
2		Owen Sloane disputes Mr. Martin's opinions, but the	(AE1028-056).	Sloan disputes Mr. Martin's opinions	
3		basis for Mr. Martin's opinions is not at issue in			
4		this Motion.			
5	D78	Since 1996, Poor Boy has continued to license the	Cook Support Decl. ¶¶ 6-7	Disputed; Cook and Clifford had no	Sidle Decl., Ex. P
6		REVISITED Mark from the CCR partnership under	(AE1073-074).	reasonable belief that a partnership with	[AE0593-96]
7		Clifford and Cook's reasonable belief that the	2017 Clifford Support Decl. ¶ 3	Patricia Fogerty ever existed or "has	
8		partnership including Patricia Fogerty has	(AE1065).	continued to exist." John Fogerty, through	
9		continued to exist and that		his counsel, had	
10		Fogerty did not take issue with licensing the mark		previously questioned Cook and Clifford	
11		only to Poor Boy.		regarding the status of the partnership: "If	
12				there is a written partnership agreement	
13				evidencing the partnership 'governed	
14				by a simple majority' to which your	
15				Licensing Agreement	
16				refers, we would appreciate it if you	
17				would send to us a copy of that written	
18 19				agreement as soon as possible. Even if the	
20				group was a partnership as recited	
21				in your purported Licensing Agreement,	
22				the dissolution of the	
23				partnership, absent some agreement to the	
24				contrary, results in the transfer of partnership	
25				assets such as the name to the individual	
26				members of the group"	
27					
28	D79	In this case, Fogerty again maintains that any use of	J. Fogerty Dep. 37:11-22; 39:11-	Disputed; the evidence cited is in	J. Fogerty Dep. 37:11-22;
			-		

-57-

1 2		the CCR Mark requires unanimous consent of the partners, and that he	22; 122:8-123:17 (AE0286-287, AE0301-302).	regards to historical facts	39:11-22; 122:8-123:17 [AE0286-87,
3		considers his promise in this regard "binding and			0301-02].
4	D80	sacred." Since 2001, Messrs.	Cook Support	Disputed; Cook and	Clifford Depo.
5	D00	Clifford and Cook have placed both John Fogerty	Decl. ¶¶ 9-10 (AE1074-075).	Clifford as the controlling partners	at pp. 145:19- 152:19; 154:9-
6 7		and other performing artists on notice of their infringing use of the CCR Mark and		have failed to police or curb widespread infringement of the	159:14 [AE0343, 0350-56];
8		successfully ceased their infringing activity. This is		CCR Mark and have instead focused on	Ex. 67-74
9		the most important infringement and less		using their control of the CCR Mark as a	[AE0758-94];
11		attention has been paid to any low-level Internet sales of T-shirts, particularly		sword against their former band member.	Cook Depo. at pp. 150:4-153:11
12		because the CCR Mark is currently being enforced			[AE00417-20].
13		against Mr. Fogerty.			
14	Fac	ts In Rebuttal To Those Rais		Support Of His Motion I	For Summary
15			Judgment		
16	D81	On numerous occasions	2015 Clifford	Undisputed that	J. Fogerty
17		since the parties executed the Settlement Agreement,	Decl. ¶ 15; Exhibits C-E	Clifford and Cook have sent threatening	Depo., pp. 147:16- 148:12
18		Clifford and Cook have put Fogerty, his advertisers and	thereto; Depo. Ex.'s 18 and 19.	letters.	[AE0303-04]
19		promoters on notice of his unauthorized use of the	(AE0799, AE0803J-803T, AE0615-	Disputed that Fogerty engaged in any illegal	
20		CCR mark, and Fogerty has ceased the unauthorized use.	AE0613- AE0623).	to the CCR mark or	
21				that any cessation of use was legally	
22	D82	In the spring of 2011,	2015 Clifford	necessary. Disputed;	
23	D02	Fogerty approached Clifford	Decl. ¶ 18;	mischaracterizes the	
24		and Cook, through counsel, and asked them to authorize	Exhibit F thereto (AE0800,	evidence, which speaks for itself. John	
25		Fogerty's creation of a T-	AE0804-805)	Fogerty's proposal	
26		shirt using the CCR Mark for sale at John Fogerty		was that <i>all</i> former CCR band members	
27		concerts.		would mutually agree to and <i>all</i> be allowed	
20				to sell such	

to sell such

28

1	<u> </u>			merchandise.	
1	D83	Clifford and Cook declined,	2017 Clifford	Undisputed that	Clifford Depo.
2	D03	but offered an alternative	Support Decl. ¶	Clifford and Cook	at pp. 73:20-
3		arrangement through	4 (AE1065-066).	declined Fogerty's	74:2; 161:22-
3		counsel that Fogerty		merchandising	162:1
4		declined.		proposal.	[AE0332-33, 0358-59];
5				Clifford and Cook	C 1 D
6				maintained that because they	Cook Depo. at p. 23:10-18
7				constituted the majority of the	[AE0387].
8				partners, they did not	
9				need Fogerty's approval in order to	
10				make partnership	
				decisions. Therefore whether Fogerty	
11				declined Cook and	
12				Clifford's alternative	
13				arrangement is	
				irrelevant and immaterial.	
14	D84	Also in the spring of 2011,	2015 Clifford	Undisputed that	
15		Fogerty again used the CCR	Decl. ¶ 19	Fogerty's advertisement in	
16		Mark without permission through an advertisement in	(AE0800).	connection with a	
17		connection with a concert in		concert in Argentina	
1 /		Argentina.		stated "John Fogerty, the songs, the guitar,	
18				the voice, of	
19				Creedence".	
20				Disputed that Fogerty	
21				needed anyone's permission for his	
22				descriptive and	
	D0 <i>f</i>	Clifford and Coals?	2015 Cliffe d	truthful statement.	
23	D85	Clifford and Cook's counsel notified Fogerty's counsel	2015 Clifford Decl. ¶ 19;	Undisputed that Clifford and Cook,	
24		of Fogerty's unauthorized	Exhibits G and H	through their counsel,	
25		use for the Argentine	thereto (AE0800,	threatened legal action	
		concert, and Fogerty ceased using the unauthorized	AE0806-807, AE0808A-808D)	if Fogerty did not change his	
26		advertising.	/ 1L0000/1-000D)	advertisement for the	
27		_		Argentina Concert.	
28	1			Disputed that Fogerty	

1				engaged in any illegal	
2				conduct with respect to the CCR mark or	
				that any cessation of	
3				use of the	
4				advertisement was	
_	Doc	T C 1 2011 CI'CC 1	2015 01:00 1	legally necessary	2017 01:00 1
5	D86	In September 2011, Clifford and Cook discovered that	2015 Clifford Decl. ¶ 21	Undisputed that in September 2011, Cook	2015 Clifford Decl. at
6		Fogerty's advertising	(AE0800).	and Clifford objected	Exhibit J
7		agency was using the CCR		to ads that stated	[AE0808G-
		Mark in advertising to		"John Fogerty	08N].
8		promote Fogerty's concerts, without permission.		Performs Live The Albums of Creedence	
9		without permission.		Clearwater Revival"	
				and "John Fogerty	
10				Performs Live the	
11				music of Creedence Clearwater Revival"	
12				Clearwater Revivar	
12				Disputed that	
13				Fogerty's advertising	
14				agency needed Cook	
				and/or Clifford's permission to include	
15				descriptive and	
16				truthful statements in	
17	D05	G 11 1 1 1	2015 01:00 1	ads.	
1 /	D87	Consistent with their practice, Clifford and Cook	2015 Clifford Decl. ¶ 21;	Undisputed that Cook and Clifford sent a	
18		sent a cease and desist letter	Exhibit J thereto	cease and desist letter	
19		to the advertising agency to	(AE0800,	to the advertising	
		cease use of the CCR Mark.	AE0808G-	agency. The letter	
20	D88	Thereafter Clifford and	808N). 2015 Clifford	speaks for itself.	
21	ססת	Thereafter, Clifford and Cook's counsel received a	Decl. ¶ 22;	Undisputed that Fogerty's counsel sent	
22		responsive letter from John	Exhibit K thereto	a letter requesting that	
		Fogerty's counsel claiming,	(AE0800-801,	Clifford and Cook	
23		among other things, that the	AE0808O-	cease their harassment of Fogerty and his	
24		letter to the advertising agency was an "unfounded	808Q).	advertising agency,	
		harassment of our [John		among others.	
25		Fogerty's, presumably]			
26	D00	business partners."	2015 Clies 1	Diameter 1 th - t F	
27	D89	Clifford and Cook were surprised at Fogerty's	2015 Clifford Decl. ¶ 22	Disputed that Fogerty ever acknowledged	
		response given the past	(AE0800-801).	that he needed to seek	
28		acknowledgement and	, , , , , , , , , , , , , , , , , , ,	permission from Cook	

-60-

1		cooperation they had		and Clifford regarding	
2		received from Fogerty.		the descriptive and	
				truthful content in his ads. Disputed that any	
3				past "cooperation" by	
4				Fogerty was legally	
				required.	
5	D90	In December 2011, after	2015 Clifford	Undisputed that Cook	
6		learning of Fogerty's	Decl. ¶ 23;	and Clifford's counsel	
		Ultimate Classic Rock interview, Clifford and	Exhibit L; (AE0801,	sent Fogerty a letter in December 2011. The	
7		Cook brought the article and	AE0808R-	letter speaks for itself.	
8		other unauthorized use of	808V).	P	
		the CCR Mark to Fogerty's		Disputed that Fogerty	
9		attention.		needed anyone's	
10				permission for descriptive and	
1 1				truthful statement with	
11				respect to the CCR	
12				name.	
13	D91	After subsequently learning	2015 Clifford	Undisputed that	
13		that Fogerty was using the CCR Mark to promote	Decl. ¶ 24; Exhibit M	Clifford and Cook sent Fogerty a cease and	
14		himself on his own website	(AE0801,	desist letter in January	
15		and was offering for sale	AE0808W-	2012. The letter	
		articles of clothing using the	808CC).	speaks for itself.	
16		CCR Mark, Clifford and Cook sent another Cease		Di	
17		and desist letter in January		Disputed that Fogerty was using the CCR	
		2012.		name in an	
18				impermissible or	
19				illegal manner.	
20					
	D92	Since 2011, Fogerty has	Deposition Exhs.	Disputed that Fogerty	Deposition
21		used the CCR Mark without	2-3, 8, 9, 21-34,	needed authorization	Transcript of
22		authorization, in connection	53-54 (AE0505-	from anyone for his	Julie Fogerty
		with:	519, AE0560-	descriptive and	at p. 45:7-17
23		(i) advertisements for	565, AE0624-33, AE0631B-631F,	truthful references to his former band. The	[AE0490].
24		Fogerty's performances	AE0634-655,	cited advertisements	Cook Depo. at
		using a photograph featured	AE0754-757).	and evidence speak for	p. 49:3-10
25		in the gatefold of CCR's		themselves.	[AE0399].
26		"Pendulum" album, using	SAC ¶ 27(a)-(c)	(i) Diamytade the	Clifford Dama
27		the same (and prominently- sized) font for	(AE0007-008).	(i) Disputed; the photograph is from	Clifford Depo. at p.47:9-22
<i>∠1</i>		CREEDENCE used in the	J. Fogerty Depo.	photographer Baron	[AE0324]
28		Chronicle album;	at 81:16-82:9;	Wolman and Cook	
	1			·	

-61-

1			82:17-21	and Clifford do not	J. Fogerty
2		(ii) other advertisements for	(AE0295-296).	know who owns the	Depo. at p.
2		Fogerty's performances that		rights to the	148:6-17
3		prominently feature the CCR Mark;		photograph. Mischaracterizes the	[AE0304]
4		CCR Mark,		evidence regarding	
4		(iii) Fogerty's Facebook		how "Creedence" is	
5		page located at		used	
		www.facebook.com/johnfog			
6		erty, where Fogerty		(ii) Disputed; a subset	
7		attributes the page to "John		of Fogerty	
		Fogerty/Creedence		advertisements refer to	
8		Clearwater Revival" under the		his former band in a truthful and	
9		category "Musician/Band"		descriptive manner.	
		and lists third parties who		descriptive manner.	
10		were never members of		(iii) Disputed;	
11		CCR as "members" of the		mischaracterizes the	
11		group;		evidence in stating	
12				that Fogerty lists third	
13		(iv) Fogerty's website located at		parties as being members of the CCR	
13		www.johnfogerty.com,		band	
14		where Fogerty sells		ound	
15		merchandise bearing		(iv) Disputed; a subset	
13		variations of the CCR Mark,		of Fogerty's	
16		including images of the		merchandise refer to	
17		group; and		his former band in a	
17		(v) Eggerty's performances		truthful and	
18		(v) Fogerty's performances at The Venetian hotel in Las		descriptive manner.	
10		Vegas, Nevada, in which		(v) Disputed; Fogerty	
19		Fogerty originally billed the		did not bill the show.	
20		show as PEACE, LOVE &			
21		CREEDENCE.			
21	D93	Fogerty and his Office	J. Fogerty Dep.	Disputed; Fogerty has	R. Fogerty
22		Manager and brother Robert	51:3-7; 85:18-25	referred to his former	Dep. 32:10-13,
22		Fogerty admit that he has used the CCR Mark in	(AE0290, AE0297);	band name to show his connection to it.	115:13-18 [AE0454,
23		advertising and on his	AL0271),	Mischaracterizes word	0458].
24		Facebook page to	R. Fogerty Dep.	"emphasize" which	, ol.
		emphasize his affiliation	32:10-13,	Defendant's counsel	
25		and connection with CCR.	115:13-18	used in reference to	
26			(AE0454,	font size.	
	D04	Gin 41 - 2001 G 441	AE0458).	D:	D C
27	D94	Since the 2001 Settlement	Cook Response	Disputed; Poor Boy ceased payments to	Response of Douglas
28		Agreement and through the present, Poor Boy has	Decl., ¶ 6 (AE1079).	John Fogerty at the	Clifford to
20	1	present, root boy nas	(111117).	John Logorty at the	Cilifold to

-62-

1		continued to make royalty		end of 2011	Request for
2		payments pursuant to the License.			Admission No. 9 (Set one)
3					[AE0228];
4					Response of
5					Stuart Cook to Request for
6					Admission No. 9 (Set One)
7					[AE0241-42];
8					Clifford Depo.
9					at p. 253:5-9 [AE0379];
10					Cook Depo pp.
11					228:21-229:7 [AE0433-34].
12	D95	Since at least 1972, the	Cook Response	Disputed; as part of an	Reply
13		CCR partnership has not noticed or held any formal	Decl., ¶ 7 (AE1079).	intricate tax plan formulated by their	Declaration of John Fogerty
14		meetings and has not filed		then attorneys and	in Support of
15		any state of federal tax returns.	J. Fogerty Dep. 89:5-17	accountants, CCR's affairs were conducted	Application for Preliminary
16			(AE0298).	through various entities, including a	Injunction ("1996 Fogerty
17			Clifford Dep. 128:15-23	Nevada partnership called Gort Functions	PI Decl."), ¶ 3 [AE1100].
18			(AE0340).	Co., a California	[AETTOO].
19				corporation called Gort Functions, Inc., a	
20				Delaware corporation called Son of Gort,	
21				Inc., and a Bahamian corporation known as	
22				King David	
23	D96	Doug Clifford has missed	Clifford Dep.	Distributors, Ltd. Disputed; Clifford also	Clifford Depo.
24		performing at some shows of Creedence Clearwater	212:19-213:16 (AE0369-370).	admitted that he missed Revisted	at p. 211:20-24 [AE0368]
25		Revisited because of throat		allegedly due to the	[1120300]
		cancer and, on a few occasions, back issues that	Cook Dep. at 226:16-227:24	stomach flu	
26		prohibited travel.	(AE0431-432).		
27	D97	Mr. Fogerty's withdrawal	Cook Response	Disputed; paragraph	2001
28		promise in Paragraph 2(a)	Decl., ¶ 4	2(a) obligated Fogerty	Settlement

-63-

1		of the 2001 Settlement	(AE1078-079).	to request dismissal of	Agreement
2		Agreement was a continuing obligation and meant that		the then pending lawsuit and served as a	[AE0611-14];
		there was no obligation to		covenant not to sue	Fogerty ROG
3		pay royalties if Mr. Fogerty		with respect to the	Responses
4		objected to Clifford, Cook		core contention	14:8-19
5		and Poor Boy's use of Creedence Clearwater		contained in that lawsuit: namely, that	[AE0260].
		Revisited.		Cook and Clifford	
6				were improperly using	
7				the 'Creedence' name to describe a band that	
8				did not include Mr.	
				Fogerty." The	
9				language is written as	
10				though John is taking a present tense act to	
11				"withdraw" something	
				that is already	
12				outstanding (i.e. the then-pending case).	
13				then-pending ease).	
14				Disputed as to alleged	
				relationship between Paragraph 2(a) and	
15				obligation to pay	
16				royalties	
17	D98	Fogerty's standard tour "rider"—the terms and	Tour Rider, Dep. Exh. 35 at	Disputed; incomplete. The full provisions	
		conditions he demands in	AEG14	states:	
18		connection with his	(AE0670).		
19		concerts—states that	D. Faranta Dan	"The name and logo	
20		"JOHN FOGERTY SHALL NEVER BE REFERRED	R. Fogerty Dep. 139:3-141:9	(trademark) of John Fogerty (see annexed	
		TO AS 'FORMERLY OF	(AE0459-461).	logo sheet, Exhibit	
21		CREEDENCE		'A') must appear in all	
22		CLEARWATER REVIVAL' IN ANY		advertising and publicity in approved	
23		FORM OF BILLING		form only	
		AND/OR ADVERTISING.		YOUNG CERTY	
24				JOHN FOGERTY SHALL NEVER BE	
25				REFERRED TO AS	
26				'FORMERLY OF	
				CREEDENCE CLEARWATER	
27				REVIVAL' IN ANY	
28				FORM OF BILLING	

1				AND/OR	
2				ADVERTISING, WITHOUT THE	
3				APPROVAL OF	
4				JOHN FOGERTY OR LSII	
				COORDINATOR."	
5	D99	The CCR Mark is world	J. Fogerty Dep.	Disputed;	
6		famous.	19:1-21:10 (AE0280-282).	mischaracterizes the evidence. Fogerty	
7			,	stated that "I think any	
8				place that Creedence Clearwater is known,	
0				probably those other	
9				two terms [Creedence	
10				and CCR] are known as well."	
11	D100	Like CCR and Poor Boy—	J. Fogerty Dep.	Disputed; the CCR	Cook Depo. at
		the only authorized licensee of a CREEDENCE-	41:23-42:7, Exh. 2; 75:11-23,	band has not provided entertainment services	pp. 124:22- 125:14
12		formative mark—Fogerty	Exh. 8.	as a vocal and	[AE0414-15].
13		uses the mark in connection	(AE0288-289,	instrumental group for	
14		with entertainment services.	AE0506-517, AEO293,	25 years. Fogerty does not use the CCR	2001 Settlement
15			AE0561-562).	name as a trademark.	Agreement,
			2015 Clifford	Poor Boy is not authorized to use	2(b) [AE0612]
16			Decl. ¶¶ 3-4, 9-	derivatives of	
17			11 (AE0797-	"Creedence" or	
18			798).	"Creedence Clearwater" other than	
19			Trademark	"Creedence	
			Registration	Clearwater Revisited"	
20	D101	In connection with his	(AE0521).	Diamutad: Fagarty	Can a a I
21	D101	entertainment services,	J. Fogerty Dep. 41:23-42:7, Exh.	Disputed; Fogerty descriptively and	See, e.g., J. Fogerty Depo.,
22		Fogerty uses CREEDENCE CLEARWATER	2; 75:11-23, Exh. 8	truthfully refers to the name "Creedence	Ex. 8 [AE0561]
23		REVIVAL, which is	(AE0288-289,	Clearwater Revival" in	[** * *]
24		identical to the CCR Mark.	AE0506-517, AEO293,	a subset of his concert ads but does not use	
25			AE0561-562).	the CCR name as a	
			Trademark	trademark.	
26			Registration		
27	D102	In promoting his	(AE0521).	Diamutade Daar Davis	Ev. 40
28	D102	In promoting his entertainment services,	J. Fogerty Dep. 78:4-11	Disputed; Poor Boy is not the only licensee	Ex. 40 Woodstock
		7		, , , , , , , , , , , , , , , , , , , ,	

-65-

1	Fogerty uses the same	(AE0294).	of the CCR mark.	Agreement, ¶ 2	
2	marketing channels as Poor Boy—the only authorized	Dep. Exhs. 77,	Undisputed that	[AE0708-24].	
3	licensee of a CREEDENCE-	82, 83.	Fogerty uses the broad		
	formative mark—namely, through Facebook, websites,	(AE0809-822)	categories of the Internet, Facebook,		
4	the Internet, newspapers and	Cook Response	and media for various		
5	media.	Decl. ¶ 8 (AE1079).	reasons, such as to connect with his fans		
6		(AE1079).	and to promote his		
7			recent book		
8					
9	Dated: January 25, 2017	Respectfully sub	mitted.		
10	3 ,	BARNES & THO			
11		By /s/Roya	Rahmanpour		
12		Levi W.	Heath	_	
13		Attorney	hmanpour s for John Fogerty		
14	D.4. 1. I 25 2017	D 4 C 11 1-	:44 - 1		
15	_	Respectfully sub	mittea, HYATT FARBER SO	CHRECK	
16		LLP		orines ori,	
17		By /s/ Mich	nael D. Rounds		
18		Michael	D. Rounds		
19		Laura Bi Attorney	ieiinski vs for Poor Boy Produ	ctions, Inc.,	
20		Creedend Douglas	vs for Poor Boy Produce Clearwater Revival Clifford and Patricia	, Stuart Cook, Fogerty	
21					
22					
23					
24					
25					
26					
27					
28					
		-66-			
-	STATEMENT OF UNCONTROVERTED FACTS				